PHILIPPINE REPORTS

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DECEMBER 9, 2020 TO JANUARY 5, 2021

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VOLUME 892

CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

DECEMBER 9, 2020 - JANUARY 5, 2021

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(as of June 2023)

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(as of December 2020-January 2021)

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2023

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 7446. December 9, 2020]

MICHELLE A. BUENAVENTURA, *Complainant, v.* **ATTY. DANY B. GILLE,** *Respondent.*

D E C I S I O N

***PER CURIAM*:**

This is a Petition for Suspension and Disbarment[1] filed by complainant Michelle A. Buenaventura (Michelle) against Atty. Dany B. Gille (Atty. Gille) for Gross Misconduct.

The Factual Antecedents:

Sometime in 2006, Michelle consulted Atty. Gille about a property mortgaged to her. Upon hearing her predicament, Atty. Gille offered his legal services to Michelle for ₱25,000.00 to which the latter agreed. Respondent then prepared an adverse claim for her, among others.

Subsequently, Atty. Gille borrowed ₱300,000.00 from Michelle. As a collateral, Atty. Gille gave Michelle a copy of Transfer Certificate of Title (TCT) No. N-272977 which allegedly covered a 1,000-square meter land situated in Quezon City worth ₱20

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

Million and a check postdated August 10, 2006 as payment for the principal obligation.

When Michelle and her father Adolfo went to the Register of Deeds (RD) of Quezon City, they were surprised upon being informed by Atty. Elbert T. Quilala (Atty. Quilala) of the RD Quezon City that the TCT was a forgery issued by a syndicate.

Michelle and Adolfo then demanded from Atty. Gille the return of the borrowed amount. During their meeting that same day, respondent promised to pay on July 18, 2006. However, he failed to pay on said date. Instead, he executed a promissory note acknowledging having issued a check postdated August 10, 2006, and promising to pay Michelle the outstanding amount on September 10, 2006. Atty. Gille then had the promissory note notarized and furnished Michelle a copy thereof.

On its due date, Michelle deposited the check but it was dishonored due to "Account Closed." As a result, she filed a criminal complaint for Estafa against Atty. Gille before the Office of the City Prosecutor of Quezon City. Michelle likewise filed the instant Petition for suspension or disbarment against respondent for allegedly committing deceit, and gross immoral conduct in violation of his Lawyer's Oath and the Code of Professional Responsibility (CPR).

After several resetting of the mandatory conference with the Integrated Bar of the Philippines (IBP), Atty. Gille was given a non-extendible period of 10 days to submit his answer. Thereafter, the parties were directed to submit their verified position papers. Unfortunately, Atty. Gille failed to submit his answer and verified position paper.

Report and Recommendation of the IBP:

The Investigating Commissioner[2] found Atty. Gille liable for Gross Misconduct for issuing a postdated check that was subsequently dishonored and for presenting a fraudulent certificate

[2] Atty. Victor C. Fernandez.

of title to obtain money from Michelle. He recommended that Atty. Gille be suspended from the practice of law for a period of two (2) years and ordered to return the loaned amount of ₱300,000.00 to Michelle.[3]

In its December 14, 2012 Resolution No. XX-2012-494,[4] the IBP Board of Governors (BOG) adopted the findings of the Investigating Commissioner with the modification that Atty. Gille should also pay legal interest on the ₱300,000.00 reckoned from the time the demand was made.

Issue

Whether or not Atty. Gille is guilty of Gross Misconduct.

Our Ruling

The Court adopts the findings of the IBP with modification as to the recommended penalty.

Possession of good moral character is not only required of those who aspire to be admitted in the practice of law. It is a continuing requirement in order for a lawyer to maintain his or her membership in the bar in good standing. This was elucidated in *In re: Sotto*[5] in this wise:

> One of the qualifications required of a candidate for admission to the bar is the possession of good moral character, and, when one who has already been admitted to the bar clearly shows, by a series of acts, that he does not follow such moral principles as should govern the conduct of an upright person, and that, in his dealings with his clients and with the courts, he disregards the rules of professional ethics required to be observed by every attorney, it is the duty of the court, as guardian of the interests of society, as well as of the preservation of the ideal standard of professional conduct, to make use of its powers to deprive him of his professional attributes which he so unworthily abused.[6]

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[3] *Rollo*, pp. 60-64.

[4] Id. at 59.

[5] 38 Phil. 532 (1918).

[6] Id. at 548-549.

Thus, a lawyer must "remain a competent, honorable, and reliable individual in whom the public reposes confidence. Any gross misconduct that puts his moral character in serious doubt renders him unfit to continue in the practice of law."[7]

"Gross misconduct is defined as 'improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment.'"[8]

For the Court to exercise its disciplinary power, the burden of proof in a disbarment proceeding rests upon the complainant who must establish with substantial evidence that the lawyer committed acts or omissions which reflect his or her unfitness to be a member of the Bar. Substantial evidence is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[9]

A thorough review of the evidence in the case shows that the required degree of proof has been established by the complainant.

Atty. Gille violated Rule 16.04, Canon 16 of the CPR, which prohibits a lawyer from borrowing money from his client unless the client's interests are fully protected, to wit:

> CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONIES AND PROPERTIES OF HIS CLIENTS THAT MAY COME INTO HIS POSSESSION.
>
> Rule 16.04 — A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

It is undisputed that Atty. Gille secured a loan from Michelle. The mere act of borrowing money from his client is considered

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[7] *Ong v. Delos Santos*, 728 Phil. 332, 337 (2014).

[8] *Malabed v. De la Peña*, 780 Phil. 462, 471-472 (2016).

[9] *Domingo v. Sacdalan*, A.C. No. 12475, March 26, 2019.

unethical and an abuse of the latter's confidence reposed upon him. In doing so, Atty. Gille took advantage of his influence over his client Michelle.[10] Further, Michelle was at a disadvantage because of respondent's ability to use all the legal maneuverings to evade his obligation.[11]

Indeed, the act of borrowing money from a client by a lawyer is highly uncalled for and therefore a ground for disciplinary action. It degrades a client's trust and confidence in his or her lawyer. This trust and confidence must be upheld at all times in accordance with a lawyer's duty to his or her client.[12] As aptly stated in *Yu v. Dela Cruz*:[13]

> Complainant voluntarily and willingly delivered her jewelry worth ₱135,000.00 to respondent lawyer who meant to borrow it and pawn it thereafter. This act alone shows respondent lawyer's blatant disregard of Rule 16.04. Complainant's acquiescence to the "pawning" of her jewelry becomes immaterial considering that the CPR is clear in that lawyers are proscribed from borrowing money or property from clients, unless the latter's interests are fully protected by the nature of the case or by independent advice. Here, respondent lawyer's act of borrowing does not constitute an exception. Respondent lawyer used his client's jewelry in order to obtain, and then appropriate for himself, the proceeds from the pledge. In so doing, he had abused the trust and confidence reposed upon him by his client. That he might have intended to subsequently pay his client the value of the jewelry is inconsequential. What deserves detestation was the very act of his exercising influence and persuasion over his client in order to gain undue benefits from the latter's property. **The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule**

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[10] *Concepcion v. Dela Rosa*, 752 Phil. 485, 495 (2015).

[11] Id.

[12] Id.

[13] 778 Phil. 557 (2016).

presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. Suffice it to say, the borrowing of money or property from a client outside the limits laid down in the CPR is an unethical act that warrants sanction.[14]

Worse, Michelle's interests were not fully protected when Atty. Gille obtained the loan. The collective acts of Atty. Gille were in utter violation of Rule 1.01, Canon 1, and Rule 7.03, Canon 7 of the CPR.

Rule 1.01, Canon 1 of the CPR provides that "A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct." The "conduct" under the Rule does not pertain solely to a lawyer's performance of professional duties.[15] It has long been settled that "[a] lawyer may be disciplined for misconduct committed either in his or her professional or private capacity. The test is whether [a lawyer's conduct manifests his or her wanting] in moral character, honesty, probity, and good demeanor, or [unworthiness] to continue as an officer of the court."[16]

Corollarily, Rule 7.03, Canon 7 of the CPR reads:

CANON 7 — A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

In *Agno v. Cagatan*,[17] the Court underscored that a lawyer must possess a high standard of honesty and fairness whether in his private or personal capacity:

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[14] Id. at 564.

[15] *Roa v. Moreno*, 633 Phil. 1, 7 (2010).

[16] Id.

[17] 580 Phil. 1 (2008).

The afore-cited canons emphasize the high standard of honesty and fairness expected of a lawyer not only in the practice of the legal profession but in his personal dealings as well. A lawyer must conduct himself with great propriety, and his behavior should be beyond reproach anywhere and at all times. For, as officers of the courts and keepers of the public's faith, they are burdened with the highest degree of social responsibility and are thus mandated to behave at all times in a manner consistent with truth and honor. Likewise, the oath that lawyers swear to impresses upon them the duty of exhibiting the highest degree of good faith, fairness and candor in their relationships with others. Thus, lawyers may be disciplined for any conduct, whether in their professional or in their private capacity, if such conduct renders them unfit to continue to be officers of the court.[18]

The acts committed by Atty. Gille showed that he fell far short of the exacting standards expected of him under the CPR.

First, respondent presented a spurious title of a property which was offered as a collateral in order to obtain loan from Michelle. It is a clear act of deception which brought disgrace and dishonor to the legal profession. He took advantage of his knowledge of the law to gain undue benefit for himself at the expense of Michelle. Atty. Gille thus failed to exercise good faith in his dealings with a client.

Second, respondent failed to pay his debt despite repeated demands which likewise constitutes dishonest and deceitful conduct.[19] Prompt payment of financial obligations is one of the duties of a lawyer.[20] This is in accord with his mandate to faithfully perform at all times his duties to society, to the bar, to the courts and to his clients.[21]

Lastly, it is even more appalling that the check issued by respondent was later dishonored for having been drawn against

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[18] Id. at 16-17.

[19] *Sosa v. Mendoza*, 756 Phil. 490, 499 (2015).

[20] *Tomlin II v. Moya II*, 518 Phil. 325, 331 (2006).

[21] Id.

a closed account. In *Cuizon v. Macalino*,[22] the Court ruled that the issuance of checks which were later dishonored for having been drawn against a closed account shows a lawyer's unfitness for the trust and confidence reposed on him.[23] It manifests a lawyer's lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action.[24] Thus, the act of Atty. Gille in issuing the check without sufficient funds reflects his moral unfitness and skewed character.

Interestingly, Atty. Gille remained silent all throughout the administrative proceedings despite the serious charge against him. It is contrary to human nature not to defend one's person when faced with a serious accusation which could possibly end in one's ruination as a professional.[25]

As it turns out, Atty. Gille's reticence was a deliberate refusal to participate in the administrative proceedings and to file his answer for no valid reason and despite due notices. In *Domingo v. Sacdalan*,[26] the Court emphasized that a member of the Bar must give due respect to the IBP which is the national organization of all the members of the legal profession, *viz.*:

> It must be underscored that respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession. He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others.

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[22] 477 Phil. 569 (2004).

[23] Id. at 575.

[24] Id.

[25] *Anacta v. Resurreccion*, 692 Phil. 488, 494 (2012).

[26] Supra note 9.

He should never forget that his duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general.

Atty. Gille, as a member of the IBP and an officer of the Court, should have known that the orders of the IBP must be complied with promptly and completely as it has been designated by the Court to investigate complaints against erring lawyers like him.[27] By defying the IBP's Orders and processes without any valid reason, he thereby utterly violated his oath "to obey the laws as well as the legal orders of the duly constituted authorities therein."[28]

All told, the Court agrees with the IBP that Atty. Gille committed Gross Misconduct. His utter disregard for his bounden duties inscribed in the CPR is clearly manifested in the following acts: (a) borrowing money from his client; (b) presenting a spurious title of a mortgaged property; (c) refusing to pay his debt despite demand; (d) issuing a worthless check; and (e) failing to comply with the orders of the IBP. His lack of honesty and good moral character are evident and renders him unworthy of the trust and confidence reposed upon him by his clients. This warrant the imposition of severe disciplinary action on him.[29]

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[27] *Villaflores-Puza v. Arellano*, 811 Phil. 313, 316 (2017).

[28] Rules of Court, Form 28.
The Lawyer's Oath states:

LAWYER'S OATH

I, . . ., do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support and defend its Constitution and **obey the laws as well as the legal orders of the duly constituted authorities therein**; I will **do no falsehood**, nor consent to its commission; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid nor consent to the same; I will not delay any man's cause for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this obligation voluntarily, without any mental reservation or purpose of evasion. So help me God. [Emphasis Supplied.]

[29] *Cuizon v. Macalino*, supra note 22, at 576.

The Court now determines the appropriate penalty.

Section 27, Rule 138 of the Rules of Court, cites Gross Misconduct as one of the grounds for disbarment or suspension from the practice of law, to wit:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other **gross misconduct** in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. [Emphasis Ours.]

Jurisprudence is replete with instances of lawyers who were found guilty of Gross Misconduct because of abuse of trust and confidence in them by their clients as well as commission of unlawful, dishonest, and deceitful conduct.

In *Foster v. Agtang*,[30] the lawyer obtained a loan from his client but failed to pay the same, and also demanded exorbitant legal fees. He was found guilty of violation of Rules 1.01 and 16.04 of the CPR for taking advantage of the complainant, and for engaging in dishonest and deceitful conduct which undermined the trust and faith of the public in the legal profession and the entire judiciary. Thus, he was meted the ultimate penalty of disbarment and ordered to return the excessive fees he received from his client.

In *HDI Holdings v. Cruz*,[31] the lawyer dealt dishonestly with his client and misappropriated the funds intended to a specific purpose for his personal gain. He also secured a loan from his

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[30] 749 Phil. 576 (2014).

[31] *HDI Holdings Philippines, Inc. v. Cruz*, A.C. No. 11724, July 31, 2018.

client and failed to pay the same. Thus, the Court imposed upon the erring lawyer the most severe penalty of disbarment from the practice of law in violation of several provisions in the CPR, including Rules 1.01 and 16.04.

In the recent case of *Domingo v. Sacdalan*,[32] the lawyer borrowed money from his client and failed to pay the same. He deceived his client that the ejectment complaint was already filed by presenting a fake receiving copy of the same to the latter. Lastly, the lawyer did not regularly update his client of the status of the case, and defied the orders of the IBP. As such, the Court found him guilty of violation of Rules 1.01, 16.04, and 18.04 of the CPR and imposed upon him the ultimate penalty of disbarment.

Finally, in *Reyes v. Rivera*,[33] we expelled the respondent lawyer from the Bar for misappropriating the funds of his client, for misrepresenting that he filed the petition for the declaration of nullity of marriage, and for presenting a spurious decision.

Similar to the aforementioned cases, the acts and omissions committed by Atty. Gille constitute Gross Misconduct in violation of the Lawyer's Oath and of Rules 1.01, 7.03, and 16.04 of the CPR. Thus, it is clear that the ultimate penalty of disbarment must be imposed against Atty. Gille and his name to be stricken off the Rolls of Attorneys.[34]

Pursuant to recent jurisprudence, Atty. Gille is likewise ordered to pay a fine of ₱5,000.00 for his disobedience to the orders of the IBP.[35]

WHEREFORE, Atty. Dany B. Gille is found **GUILTY** of violating Rules 1.01, 7.03, and 16.04, of the Code of Professional Responsibility, and of the Lawyer's Oath. He is thus

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[32] Supra note 9.

[33] A.C. No. 9114, October 6, 2020.

[34] *Domingo v. Sacdalan, supra* note 9.

[35] Id.

DISBARRED from the practice of law and his name stricken off from the Roll of Attorneys, effective immediately.

Atty. Dany B. Gille is also hereby meted a **FINE** in the amount ₱5,000.00 for his disobedience to the orders of the Integrated Bar of the Philippines.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Dany B. Gille's records. Copies shall likewise be furnished to the (a) Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; (b) all administrative and quasi-judicial agencies of the Republic of the Philippines; and (c) the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

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

EN BANC

[A.C. No. 8111. December 9, 2020]

ADELITA S. VILLAMOR, *Complainant, v.* **ATTY. ELY GALLAND A. JUMAO-AS,** *Respondent.*

D E C I S I O N

HERNANDO, *J.*:

Adelita S. Villamor (Villamor) charges Atty. Ely Galland A. Jumao-as (Atty. Jumao-as) with violation of the Code of Professional Responsibility (CPR) for representing conflicting interests.

Villamor alleged that Felipe Retubado (Retubado) and Atty. Jumao-as coaxed her into organizing a lending company. Retubado volunteered to handle the day-to-day operation while Atty. Jumao-as would handle the legal side of the business. Persuaded by these representations, Villamor acceded.

True to his word, respondent took care of the registration of the company with the Securities and Exchange Commission (SEC) as well as preparation and drafting of some legal documents such as the Articles of Incorporation (AOI).[1] In addition, when the company needed additional funds, Atty. Jumao-as informed Villamor that she could borrow from Debbie Yu (Yu). Soon after, Atty. Jumao-as delivered the amount of ₱500,000.00 to Villamor, which amount was infused into the lending business as additional capital. Atty. Jumao-as then prepared a promissory note where all three of them signed as co-borrowers. Villamor, however, was neither given a copy of the said promissory note nor had any occasion to meet Yu.

In March 2007, respondent requested Villamor to sign blank SEC pre-printed AOI forms. That same month, Atty. Jumao-as

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[1] See *rollo*, p. 19.

gave Villamor a copy of the Certificate of Registration[2] of their lending company which they named as AEV Villamor Credit, Inc. To her surprise, Villamor noted that respondent[3] and Retubado each own 30,000 shares of stock or 48% of the company despite the fact that they only contributed a minimal amount of money.

In April 2008, respondent told Villamor to issue a post-dated check amounting to ₱650,000.00 in the name of Yu as a belated security for their loan of ₱500,000.00, with ₱150,000.00 representing accrued interest. Respondent assured Villamor that said check will not be negotiated.

In May 2008, Atty. Jumao-as and Retubado left Villamor's company and joined Yu's 3E's Debt Equity Grant Co., also a lending company. Subsequently, Villamor also came to know that Atty. Jumao-as and Retubado were trying to convince the collectors of AEV Villamor Credit, Inc. to abandon Villamor and to join their new lending company. They told Villamor's collectors to remit their collections to 3E's Debt Equity Grant Co. since Villamor owed Yu the amount of ₱650,000.00 and that they could join their new company after they have fully remitted the amount of ₱650,000.00.

Worse, on October 8, 2008, Atty. Jumao-as sent a demand letter to Villamor, for and in behalf of Yu, demanding payment of ₱650,000.00.

Hence, this complaint.[4]

In fine, Villamor alleged that respondent represented conflicting interests when he sent her the demand letter in behalf of his new client, Yu. Atty. Jumao-as also breached her trust and confidence when he deceitfully organized 3E's Debt Equity Grant Co. in direct competition to AEV Villamor Credit, Inc. and for manipulating her collectors into leaving AEV Villamor

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[2] Id. at 17.

[3] As represented by Jameley R. Adlawan, his fiancée; see *rollo*, p. 22.

[4] *Rollo*, pp. 1-16.

Credit, Inc. and remitting their collections to 3E's Debt Equity Grant, Co.

Respondent denied any lawyer-client relationship with Villamor. He claimed that it was Retubado who engaged his services solely for the incorporation of AEV Villamor Credit, Inc. He admitted having facilitated the amount of ₱500,000.00 loaned from Yu, his client. He averred that he was the one who delivered the amount to Villamor and had her sign a promissory note which was prepared by Yu's secretary.

Atty. Jumao-as stressed that his participation was solely to facilitate the incorporation of AEV Villamor Credit, Inc. He denied the imputation that Villamor hired his services as the lawyer of the said lending company. Lastly, he asserted that 3E's Debt Equity Grant Co. is a proprietorship business owned by Yu.

Report and Recommendation of the IBP:

The Investigating Commissioner[5] found respondent guilty of representing conflicting interest and thus recommended that he be suspended from the practice of law for a period of one year with warning that a repetition of the same or similar act would be dealt with severely.[6] The Board of Governors (BOG), in its Resolution No. XX-2013-140[7] dated February 13, 2013, unanimously adopted the findings of the Investigating Commissioner but with modification that the period of suspension be increased to two years with warning.

Respondent sought reconsideration stating that as early as December 5, 2009, Villamor had already filed her Affidavit of Desistance. However, the IBP was not swayed and thus denied respondent's motion for reconsideration in its Resolution No. XXI-2014-112[8] dated March 21, 2014.

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[5] Atty. Salvador B. Hababag.

[6] *Rollo*, p. 328.

[7] Id. at 301.

[8] Id. at 299.

Our Ruling

We adopt the findings of the IBP that respondent is guilty of representing conflicting interests and approve its recommendation to suspend respondent from the practice of law for two (2) years.

In my recent *ponencia*,[9] we discussed conflict of interest in this wise:

> Rules on conflict of interest are embodied in Rule 15.03, Canon 15 of the CPR, which states, to wit:
>
> > Canon 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.
> >
> > x x x x x x x x x
> >
> > Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.
>
> In *Hornilla v. Salunat*, the Court explained the concept of conflict of interest in this wise:
>
> > There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and

[9] *Burgos v. Bereber*, A.C. No. 12666, March 4, 2020.

> loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.
>
> Simply put, in determining whether a lawyer is guilty of violating the rules on conflict of interest under the CPR, it is essential to determine whether: (1) "a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client"; (2) "the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty"; and (3) "a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment."[10] (Citations omitted)

Thus, to determine whether a conflict of interests exists, it is necessary to first ascertain whether a lawyer-client relationship existed between Villamor and respondent on one hand, and Yu and respondent on the other.

> The lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other *fora*. From that moment on, the lawyer is bound to respect the relationship and to maintain the trust and confidence of his client.[11]

In this case, there can be no denying that a lawyer-client relationship existed between Villamor and respondent despite the absence of any express or written agreement or arrangement as to attorney's fees. Atty. Jumao-as' argument that it was Retubado who engaged his legal services and that his participation was limited only to the incorporation of the lending company, is misplaced. It must be stressed that in the course of the incorporation, respondent directly dealt with Villamor as owner of the company; conversely, Villamor definitely made consultations with respondent on legal matters pertaining to

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[10] Id.

[11] *Legaspi v. Gonzales*, A.C. No. 12076, June 22, 2020.

the incorporation and operation of the lending business. In turn, respondent learned of confidential information from Villamor. In fine, a lawyer-client relationship existed between Villamor and respondent. On the other hand, respondent expressly admitted that Yu was also his client.

Thus, when respondent sent a demand letter to Villamor on behalf of Yu, he was clearly representing conflicting interests. Suffice it to state that Villamor and Yu have inconsistent interests. If respondent would argue for the rights of Yu, he would in effect directly oppose the interests of Villamor. In short, he would be representing inconsistent and opposing interests which is not allowed.

Canon 15 of the CPR requires lawyers to observe candor, fairness and loyalty in all his/her dealings and transactions with his/her clients. Corollary to this, Rule 15.03 provides that lawyers shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

As the records bear out, Atty. Jumao-as was the one who reserved with the SEC the name of their business, AEV Villamor Credit, Inc., as evidenced by the stamp marked at the bottom portion of the AOI which indicated: presented by: Name: Ely Galland Jumao-as, dated March 12, 2007.[12] Respondent's name and signature also appear at the bottom portion of the Certificate of Incorporation of AEV Villamor Credit, Inc., which he notarized.[13]

On the other hand, respondent expressly admitted that Yu is also his client. It is also on record that Atty. Jumao-as sent a Demand Letter dated October 8, 2008 for and in behalf of his client, Yu, demanding payment of ₱650,000.00 from Villamor.[14] Likewise, respondent also sent a Reply Letter dated October 22, 2008, for and in behalf of his client Yu, stating that Villamor

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[12] *Rollo*, p. 19.

[13] Id. at 17, 24.

[14] Id. at 35.

received the ₱500,000.00 from him (respondent) and in exchange, Villamor signed a promissory note in favor of Yu.[15]

The rule prohibiting representing conflicting interests was fashioned to prevent situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. In the same way, a lawyer may be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation. The rule is grounded in the fiduciary obligation of loyalty. The nature of the relationship, is, therefore, one of trust and confidence of the highest degree.

In view of the foregoing, there is no doubt that the act of respondent of representing conflicting interests warrants the imposition of an administrative sanction upon him. Section 27, Rule 138 of the Rules of Court provides:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or **for any violation of the oath which he is required to take before admission to practice**, or for a willful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

In *Quiambao v. Bamba*,[16] the Court pointed out that jurisprudence regarding the penalty solely for a lawyer's representation of conflicting interests is suspension from the practice of law ranging from one to three years. In *Vda. De Alisbo v. Jalandoon, Sr.*,[17] the respondent, who appeared for

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[15] Id. at 37.

[16] 505 Phil. 126 (2005).

[17] 276 Phil. 349 (1991).

complainant in a case for revival of judgment, even though he had been the counsel of the adverse party in the case sought to be revived, was suspended for a period of two years. Also, in *Philippine National Bank v. Cedo*,[18] the Court suspended the respondent therein for three years, but only because respondent not only represented conflicting interests, but also deliberately intended to attract clients with interests adverse to his former employer.

WHEREFORE, the Court finds Atty. Ely Galland A. Jumao-as **GUILTY** of violating Canon 15, Rule 15.03 Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of two (2) years and **WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Respondent is **DIRECTED** to file a Manifestation to this Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Ely Galland A. Jumao-as as an attorney-at-law; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

SO ORDERED.

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

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[18] 312 Phil. 904 (1995).

EN BANC

[A.C. No. 10928. December 9, 2020]

JUDGE JUANITA T. GUERRERO, *Complainant, v*. **ATTY. MA. ELEANOR LA-ARNI A. GIRON,** *Respondent*.

D E C I S I O N

ZALAMEDA, *J.*:

This administrative case stemmed from a letter-report[1] dated 24 September 2015, submitted by Executive Judge Juanita T. Guerrero of the Regional Trial Court of Muntinlupa City before the Office of the Bar Confidant (OBC). The Executive Judge endorsed to the OBC, for appropriate action, the execution of notarial acts by respondent Atty. Ma. Eleanor La-Arni A. Giron despite expiration of her commission as notary public.

Antecedents

In the letter-report, Executive Judge Guerrero alleged that the Office of the Clerk of Court of Muntinlupa City conducted an inventory of its notarial records. Upon verification, respondent was found to have submitted notarial reports beyond the expired term of her notarial commission. Further, the dates appearing on the notarial stamps of the documents notarized by respondent, which should indicate the expiry date of her term, were erased or tampered with to make it appear that she still had a valid commission.[2]

By Resolution[3] dated 20 January 2016, the Court required respondent to comment on the letter-report and referred this administrative case to Executive Judge Guerrero for further investigation, report, and recommendation.

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[1] *Rollo*, p. 1.

[2] *Id.*

[3] *Rollo*, Resolution dated 20 January 2016.

In her comment, respondent asserted she believed in good faith that her notarial commission was valid and had yet to expire on 31 December 2015 when she notarized the said documents. As respondent received the notarial commission on 27 September 2013, she was under the impression that her two (2)-year commission was for the years 2014 and 2015. Respondent apologized for her error in notarizing documents beyond the actual expiration of her commission on 31 December 2014. She had no intention of exercising her privileges as a notary public beyond the validity of her commission. Moreover, respondent averred it was the first and only time she applied for a notarial commission. She merely notarized a few documents exclusively for clients or members of her law firm. Respondent further submitted that her continued filing of a notarial report conclusively established her good faith.[4]

Findings and Recommendation of the Executive Judge

In her Report/Recommendation dated 27 September 2017, Executive Judge Guerrero noted that respondent's appointment and commission as notary public was for a specified term beginning on 27 September 2013 and ending on 31 December 2014. While respondent claimed good faith, she was given a copy of her appointment which expressly provided that her commission as notary public for Muntinlupa City would end on 31 December 2014. Also, the fact that the dates on the stamped portions of the notarized documents were erased or altered to make it appear that her term ends in 2015 belied her claim of good faith.[5]

Contrary to respondent's claim that the documents involved were few and limited, the Executive Judge found that respondent notarized a total of twenty-eight (28) documents after the expiration of her term. Despite respondent's profuse apologies, she remains liable for violating the 2004 Rules on Notarial Practice for performing notarial acts beyond the validity of her

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[4] *Rollo*, Comment dated 04 September 2017.

[5] *Rollo*, Report/Recommendation dated 27 September 2017.

commission. Thus, the Executive Judge recommended respondent's disqualification from being commissioned as notary public for a period of two (2) years, with a warning that repetition of a similar violation will be dealt with severely.[6]

Ruling of the Court

The Court agrees with the findings of the Executive Judge, except as to the recommended penalty.

Time and again, the Court has emphasized that notarization of documents is not an empty, meaningless routinary act but one invested with substantive public interest. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[7]

Without a commission, a lawyer is unauthorized to perform any of the notarial acts. A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities.[8]

In the present case, respondent admittedly performed the notarial acts without a valid notarial commission. In her defense, respondent insists she acted in good faith since she believed her commission would actually expire on 31 December 2015. However, her claim of good faith is belied by the tampered dates on the stamps appearing in the notarized documents. On the stamped portions below her signature, it should indicate that her notarial commission was valid until 31 December 2014

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[6] *Id.*

[7] *Spouses Elmer and Mila Soriano v. Atty. Gervacio B. Ortiz, Jr.*, A.C. No. 10540, 28 November 2019 [Per C.J. Peralta].

[8] *Japitana v. Parado*, A.C. No. 10859, 26 January 2016 [*Per Curiam*].

only. To make it appear that she still had a valid commission, the "4" in 2014 was altered by a "5," superimposed or handwritten over the original number.

With each act of tampering, respondent was constantly reminded that her commission was set to expire on 31 December 2014. If respondent truly acted in good faith, she could have easily checked the term of her commission since she was furnished a copy of her appointment. Ultimately, the multiple acts of changing dates from 2014 to 2015 exhibited bad faith and established respondent's intention to continue notarizing documents even with an expired notarial commission.

By performing notarial acts without the necessary commission from the court, respondent violated not only her oath to obey the laws, particularly the Rules on Notarial Practice, but also Canons 1 and 7 of the Code of Professional Responsibility, which proscribe all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and direct them to uphold the integrity and dignity of the legal profession, at all times.[9]

The Court, in *Nunga v. Atty. Viray*,[10] appropriately held that where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial act without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."[11]

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[9] *Spouses Frias v. Abao*, A.C. No. 12467, 10 April 2019 [Per *J.* Peralta].

[10] A.C. No. 4758, 30 April 1999 [Per *C.J.* Davide, Jr.].

[11] *See also supra* at note 9.

In a long line of cases, the Court imposed serious disciplinary sanctions upon lawyers for notarizing documents with expired commissions. In *Zoreta v. Atty. Simpliciano*,[12] the respondent was, likewise, suspended from the practice of law for a period of two (2) years and was permanently barred from being commissioned as a notary public for notarizing several documents after the expiration of his commission. In the case of *Judge Laquindanum v. Atty. Quintana*,[13] the Court suspended a lawyer for six (6) months and was disqualified from being commissioned as notary public for a period of two (2) years because he notarized documents outside the area of his commission and with an expired commission. In *Japitana v. Atty. Parado*,[14] following the Court's pronouncements in *Re: Violation of Rules on Notarial Practice*,[15] the lawyer was suspended for two (2) years from the practice of law and forever barred from becoming a notary public when he notarized documents with no existing notarial commission. Finally, in the recent case of *Spouses Frias v. Atty. Abao*,[16] a lawyer who performed the notarial act without the required commission was also suspended from the practice of law for two (2) years and permanently barred from being commissioned as notary public.[17]

Considering respondent's act of notarizing documents without requisite authority, coupled with the tampering of the stamped dates to make it appear she still had a valid commission, the Court finds the recommended penalty insufficient. Instead, respondent must be permanently barred from being commissioned as notary public and suspended from the practice of law for a period of two (2) years.

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[12] A.C. No. 6492, 18 November 2004 [Per *J.* Chico-Nazario].

[13] A.C. No. 7036, 29 June 2009 [Per *C.J.* Puno].

[14] *Supra* at note 8.

[15] A.M. No. 09-6-1-SC, 21 January 2015 [Per *J.* Mendoza].

[16] *Supra* at note 9.

[17] *Id.*

WHEREFORE, respondent Atty. Ma. Eleanor La-Arni A. Giron is found **GUILTY** of malpractice as a notary public, and of violating the lawyer's oath as well as Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, she is **SUSPENDED** from the practice of law for two (2) years and **BARRED PERMANENTLY** from being commissioned as Notary Public, with warning that a repetition of similar acts shall be dealt with more severely.

This Decision shall take effect immediately upon receipt of Atty. Ma. Eleanor La-Arni A. Giron. She shall inform this Court and the Office of the Bar Confidant in writing of the date she received a copy of this Decision. Copies of this Decision shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record, and the Integrated Bar of the Philippines. The Office of the Court Administrator is directed to circulate copies of this Decision to all courts concerned.

SO ORDERED.

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

EN BANC

[A.C. No. 12072. December 9, 2020]

NAPOLEON S. QUITAZOL, *Complainant, v.* **ATTY. HENRY S. CAPELA,** *Respondent*.

APPEARANCES OF COUNSEL

Ma. Tilde Titina T. Wacquisan-Azurin for complainant.
H.S. Capela Law Office for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

A lawyer should never leave his client groping in the dark, for to do so would destroy the trust, faith, and confidence reposed not only in the lawyer so retained, but also in the legal profession as a whole.[1] What is more, when faced with an administrative complaint, a lawyer's misconduct is aggravated by his unjustified refusal to heed the order of the Integrated Bar of the Philippines (IBP).[2]

ANTECEDENTS

Napoleon S. Quitazol (Napoleon) engaged the services of Atty. Henry S. Capela (Atty. Capela) in a civil case for breach of contract and damages before the Regional Trial Court (RTC) of Alaminos City, Pangasinan.[3] In the retainer agreement, Atty. Capela indicated his office address at Unit 1411, 14th Floor, Tower One & Exchange Plaza, Ayala Triangle 1, Ayala Avenue,

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[1] *Katipunan Jr. v. Carrera*, A.C. No. 12661, February 19, 2020, citing *Uy v. Atty. Tansinsin*, 610 Phil. 709, 716 (2009).

[2] *PO1 Caspe v. Atty. Mejica*, 755 Phil. 312, 321-322 (2015), citing *Cabauatan v. Atty. Venida*, 721 Phil. 733, 738 (2013); *Heenan v. Atty. Espejo*, 722 Phil. 528, 535 (2013); and *Almendarez, Jr. v. Atty. Langit*, 528 Phil. 814, 820-821 (2006).

[3] *Rollo*, pp. 97-99.

Makati City. As acceptance fee, Napoleon agreed to deliver to Atty. Capela the possession of his Toyota Corolla GLI model, as well as its official receipt and certificate of registration.[4] Atty. Capela entered his appearance[5] and filed an answer before the RTC.[6] On February 12, 2014, a preliminary conference was held and the opposing counsel manifested the possibility of a compromise agreement, however, Atty. Capela was not present.[7] The agreement was then set to be heard on March 26,[8] May 7,[9] and August 6, 2014,[10] but Atty. Capela failed to appear. Left without a lawyer, Napoleon was constrained to agree to the Compromise Agreement,[11] which was approved by the RTC on August 19, 2014.[12] Napoleon felt shortchanged with Atty. Capela's non-appearance, thus, he demanded the return of the motor vehicle and ₱38,000.00,[13] but Atty. Capela did not yield.

Consequently, Napoleon instituted a Complaint[14] before the IBP Commission on Bar Discipline (IBP-CBD) against Atty. Capela for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility (CPR). Napoleon alleged that Atty. Capela's continued absence during the hearings constitutes neglect of his duty to represent his client. Left without counsel, he was forced to enter into an amicable settlement to his damage and prejudice.

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[4] *Id.* at 6-7.

[5] *Id.* at 8-11. In his entry of appearance, Atty. Capela's address of record was also at Unit 1411, 14th Floor, Tower One & Exchange Plaza, Ayala Triangle 1, Ayala Avenue, Makati City.

[6] *Id.* at 138-143.

[7] *Id.* at 151.

[8] *Id.* at 152.

[9] *Id.* at 153.

[10] *Id.* at 154.

[11] *Id.* at 158-159.

[12] *Id.* at 160-161.

[13] *Id.* at 12-13.

[14] *Id.* at 2-5.

The IBP-CBD required Atty. Capela to submit his answer with a warning that failure to do so would render him in default, and the case shall be heard *ex-parte*. Atty. Capela did not file an answer. Later, the parties were notified to appear for a mandatory conference on March 26, 2015. The notice stated that non-appearance by any of the parties shall be deemed a waiver of their right to participate in further proceedings.[15] At the mandatory conference, only Napoleon appeared.[16] Thus, the IBP issued an Order[17] noting Atty. Capela's failure to file an answer, and his absence during the mandatory conference. He was declared in default and considered to have waived his right to participate in further proceedings. Meantime, on April 30, 2015, Napoleon died and was substituted by his brother Frank S. Quitazol.[18]

In a Report and Recommendation dated May 29, 2015,[19] Investigating Commissioner Honesto A. Villamor found Atty. Capela administratively liable and ruled that he failed to contradict the allegations in the complaint. Atty. Capela's unjustified refusal to heed the directives of the IBP — to file an answer, to appear at the mandatory conference, and to file a position paper — constituted blatant disrespect amounting to conduct unbecoming a lawyer. The Commissioner recommended that Atty. Capela be meted the penalty of suspension from the practice of law for six months, thus:

> WHEREFORE, premises considered, finding Respondent Atty. Henry S. Capela guilty of Violating Canon 18, 18.03, Canon 7, and Canon 11 x x x of the Code of Professional Responsibility and he is hereby recommended to be suspended for a period of six (6) months and to order him to return the amount of Two Hundred Thousand Pesos ([₱]200,000.00) the value of the car which was given to him by the

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[15] *Id.* at 15 and 16.

[16] *Id.* at 27. N.B. Napoleon was then represented by a new counsel, Atty. Ma. Tilde Titina T. Wacquisan-Azurin.

[17] *Id.* at 28.

[18] *Id.* at 49-50.

[19] *Id.* at 54-56.

complainant within thirty (30) days and with a warning that repetition of the same or similar offense shall be dealt with more severely.

RESPECTFULLY SUBMITTED[.][20]

On June 20, 2015, the IBP Board of Governors issued a Resolution that adopted and approved the findings of administrative liability, but modified the recommended penalty of suspension, from six months, to three years.[21]

Atty. Capela then filed an omnibus motion for reconsideration, denying that he served as counsel to Napoleon. Atty. Capela admitted that a retainer agreement, with Napoleon was drafted, but claimed that he did not receive a signed copy of the agreement nor any motor vehicle as payment for his legal services. Moreover, the complaint has no longer a leg to stand on, since Napoleon, through his substitute, issued an affidavit withdrawing the administrative case.[22] Anent the finding that he was guilty of conduct unbecoming a lawyer, Atty. Capela claimed that he was unaware of the complaint against him because he was no longer holding office at Makati City, where all the notices were sent. He was only apprised of the complaint when one Pacita Cala informed him of the assailed IBP Resolution.[23] The IBP

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[20] *Id.* at 56.

[21] *Id.* at 53. The IBP Board of Governors resolved as follows:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex 'A', considering Respondent's violation of Canon 18, Rule 18.03, Canon 7 and Canon 11 of the Code of Professional Responsibility aggravated by his blatant disrespect for IBP demonstrated by his failure to file Answer despite numerous notices sent and unjustified refusal to heed the directives of the Commission to appear at the scheduled mandatory conference. Hence, Respondent Atty. Henry S. Capela is hereby* ***SUSPENDED from the practice of law for three (3) years*** *without prejudice to file a proper action for recovery of the value of the car in the proper Court.*

[22] *Id.* at 105-107.

[23] *Id.* at 57-81.

Board of Governors denied Atty. Capela's motion for reconsideration.[24]

RULING OF THE COURT

We adopt the conclusion and findings of the IBP, but modify the penalty imposed.

There is an attorney-client relationship between Napoleon and Atty. Capela.

It cannot be overemphasized that the practice of law is a profession. It is a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character.[25] When a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the client's interests, and take all steps, or do all acts necessary.[26] Thus, lawyers are required to maintain, at all times, a high standard of legal proficiency, and to devote their full attention, skill and competence to their cases, regardless of their importance, and whether they accept them for a fee, or for free.[27]

In this case, the legal service of Atty. Capela was engaged by Napoleon to handle a civil case before the RTC of Alaminos City, Pangasinan. Atty. Capela entered his appearance as Napoleon's counsel, moved for extension of time, and filed an answer. Atty. Capela's contention, that he did not receive a

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[24] *Id.* at 168; Resolution dated June 17, 2017. The IBP Board of Governors resolved as follows:

RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.

[25] *Caballero v. Atty. Pilapil*, A.C. No. 7075, January 21, 2020.

[26] *Sps. Gimena v. Atty. Vijiga*, 821 Phil. 185, 190 (2017).

[27] *Caranza Vda. de Saldivar v. Atty. Cabanes, Jr.*, 713 Phil. 530, 537-538 (2013), citing *Villaflores v. Atty. Limos*, 563 Phil. 453, 461 (2007).

copy of the signed retainer agreement to prove an attorney-client relationship, is not credible. He would not have undertaken to enter his appearance, as well as, move for extension and file a pleading if he was not representing Napoleon.

Moreover, a written contract or retainer agreement, is not an essential element in the employment of an attorney; a contract may be express or implied. To establish a lawyer-client relationship, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession,[28] as in this case. Neither is the claim that no payment was received, defeat the existence of the relationship. It is not necessary that any retainer should have been paid, promised, or charged for, to constitute professional employment.[29]

Atty. Capela's failure to attend hearings constitutes negligence.

A lawyer's neglect of a legal matter entrusted to him constitutes inexcusable negligence for which he must be held administratively liable.[30] From the perspective of ethics in the legal profession, a lawyer's lethargy in carrying out his duties, is both unprofessional and unethical.[31] Rule 18.03, Canon 18 of the CPR embody this principle:

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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[28] *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064, 1068 (2002), citing *Dee v. Court of Appeals*, 257 Phil. 661, 668 (1989).

[29] *Junio v. Atty. Grupo*, 423 Phil. 808, 818 (2001).

[30] *Francia v. Sagario*, A.C. No. 10938, October 8, 2019.

[31] *Belleza v. Atty. Macasa*, 611 Phil. 179, 188 (2009).

Whenever lawyers take on their client's causes, they pledge to exercise due diligence in protecting the client's rights. Their failure to exercise that degree of vigilance and attention expected of a good father of a family makes them unworthy of the trust reposed in them by their client and make them answerable to their client, the courts and society.[32] Here, Atty. Capela failed to exercise the required diligence in handling his client's cause. His failure to attend, despite notice, the four scheduled hearings on February 12, March 26, May 7, and August 6, 2014, constitutes inexcusable negligence. As the complainant's counsel of record, Atty. Capela is responsible for the conduct of the case in all its stages. His duty of competence and diligence includes not merely reviewing the case, and giving the client sound legal advice, but also properly representing the client in court, attending scheduled hearings, preparing and filing required pleadings, and prosecuting the case with reasonable dispatch, without waiting for the client, or the court to prod him to do so. A lawyer should not sit idly by, and leave the rights of his client in a state of uncertainty.[33] Clearly, Atty. Capela was unjustifiably remiss in his duty as legal counsel to Napoleon.

The affidavit of withdrawal, executed by Napoleon's substitute does not excuse Atty. Capela's negligence.

An affidavit of withdrawal or desistance does not terminate the disciplinary proceedings against an errant lawyer. Section 5, Rule 139-B of the Rules of Court state that "*[n]o investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same, unless the Supreme Court motu proprio or upon recommendation of the IBP Board of Governors, determines that there is no compelling reason to continue with the disbarment or suspension proceedings*

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[32] *Santos v. Atty. Lazaro*, 445 Phil. 1, 5 (2003).

[33] *Conlu v. Atty. Aredonia, Jr.*, 673 Phil. 1, 7 (2011), citing *Overgaard v. Atty. Valdez*, 601 Phil. 558, 567 (2009).

against the respondent."[34] A case of suspension or disbarment may proceed regardless of the interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of negligence has been duly proved.[35] This rule is premised on the nature of disciplinary proceedings,[36] to wit:

> [D]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[37]

Jurisprudence is replete with cases holding that an affidavit of desistance is immaterial in administrative proceedings. In *Spouses Soriano v. Atty. Reyes*,[38] we suspended the lawyer for his failure to file a pre-trial brief, notwithstanding an affidavit of withdrawal. Likewise, the respondent lawyer in *Angalan v. Atty. Delante*,[39] was disbarred, despite an affidavit

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[34] Bar Matter No. 1645, Re: Amendment of Rule 139-B, October 13, 2015.

[35] *Spouses Soriano v. Atty. Reyes*, 523 Phil. 1, 12 (2006).

[36] *Id.*

[37] *BSA Tower Condominium Corporation v. Atty. Reyes*, 833 Phil. 588, 595 (2018), citing *Reyes v. Atty. Nieva*, 794 Phil. 360, 379-380 (2016).

[38] 523 Phil. 1 (2006).

[39] 597 Phil. 690 (2009).

of desistance, for taking advantage of his clients and transferring the title of their property to his name. In *Ylaya v. Atty. Gacott*,[40] the disciplinary case continued against the negligent lawyer although the complainant moved to withdraw the complaint. Applying these precepts, Napoleon's affidavit of withdrawal neither exonerates Atty. Capela nor puts an end to the administrative proceedings. The disciplinary case against Atty. Capela thus proceeds.

Proper penalty imposed.

A member of the Bar may be penalized, even disbarred, or suspended from his office as an attorney for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR.[41] The appropriate penalty for a negligent lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. In several instances, the Court imposed upon negligent lawyers a penalty of suspension of six months from the practice of law. In *Caranza Vda. de Saldivar*,[42] a lawyer was suspended for six months for his failure to file a pre-trial brief and attend the scheduled preliminary conference. In *Spouses Aranda v. Atty. Elayda*,[43] a six-month suspension was also imposed when the respondent lawyer failed to appear in a scheduled hearing despite due notice, which resulted in the submission of the case for decision. Likewise, in *Penilla v. Atty. Alcid, Jr.*,[44] the respondent lawyer's explanation that he failed to update his client of the status of the case because their time did not always coincide was considered too flimsy an excuse, and the Court accordingly suspended the lawyer for six months. We further held in *Spouses Adecer v. Atty. Akut*,[45] that an attorney's failure to timely file a motion for

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[40] 702 Phil. 390 (2013).

[41] *Caballero v. Atty. Pilapil, supra* note 25.

[42] *Supra* note 27, at 537.

[43] 653 Phil. 1 (2010).

[44] 717 Phil. 210 (2013).

[45] 522 Phil. 542 (2006).

reconsideration, or an appeal, renders him liable for negligence, which is penalized with suspension for six months. In *Spouses Rabanal v. Atty. Tugade*,[46] the lawyer who failed to file an appellant's brief before the CA despite being granted extensions of time, was also suspended for six months. Following these precedents, we deem it just and proper to suspend Atty. Capela from the practice of law for a period of six months.

In addition, Atty. Capela shall pay a fine of ₱5,000.00 for his repeated refusal to obey the orders of the IBP directing him to file an answer to the complaint, to appear at the scheduled mandatory conference, and to file a position paper.[47] We cannot countenance Atty. Capela's reason that he was improperly furnished of the complaint against him because the notices were sent to his former office address in Makati City. An attorney owes it to himself to adopt an orderly system of receiving mail matters,[48] especially in this case when the lawyer changed his office address. Atty. Capela should have instructed his former office to notify him of mail matters addressed to him or, at least, to simply decline their receipt. Similarly, in *Cabauatan v. Atty. Venida*,[49] the respondent lawyer was declared guilty of disregarding the IBP's notices and orders when he did not file his answer and position paper despite notice. He also disregarded the IBP's directives for him to attend the mandatory conference. We held that:

> Respondent's refusal to obey the orders of the IBP "is not only irresponsible, but also constitutes utter disrespect for the judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court." Respondent should be reminded that —

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[46] 432 Phil. 1064 (2002).

[47] See *Domingo v. Atty. Sacdalan*, A.C. No. 12475, March 26, 2019, citing *Ojales v. Atty. Villahermosa*, 819 Phil. 1, 7 (2017).

[48] See *Gonzales v. Court of Appeals*, 450 Phil. 296, 302 (2003).

[49] 721 Phil. 733 (2013).

> As an officer of the court, [he] is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely. This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers.
>
> Respondent should strive harder to live up to his duties of observing and maintaining the respect due to the courts, respect for law and for legal processes, and of upholding the integrity and dignity of the legal profession in order to perform his responsibilities as a lawyer effectively.[50] [Citations omitted.]

FOR THE STATED REASONS, Atty. Henry S. Capela is found administratively liable for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for a period of six (6) months, effective immediately upon respondent's receipt of this Resolution, with a **STERN WARNING** that a repetition of the same, or similar acts will be dealt with more severely.

Atty. Henry S. Capela is also meted a **FINE** in the amount of ₱5,000.00 for disobedience to the orders of the Integrated Bar of the Philippines. This payment shall be made within ten (10) days from notice of this Resolution.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be entered into Atty. Henry S. Capela's records. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts throughout the country for their information and guidance.

SO ORDERED.

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

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[50] *Id.* at 738-739.

THIRD DIVISION

[A.M. No. SCC-15-21-P. December 9, 2020]
(Formerly A.M. No. 15-01-01-SCC)

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, *v.* **ANINDING M. ALAUYA, Clerk of Court II, Shari'a Circuit Court, Molundo-Maguing-Ramain-Buadiposo-Bubong, Molundo, Lanao del Sur,** *Respondent*.

D E C I S I O N

HERNANDO, *J.*:

This administrative matter stemmed from a financial audit report[1] of the Financial Audit Team, Fiscal Monitoring Division, Court Management Office, Office of the Court Administrator (OCA), on the books of accounts of Aninding M. Alauya (respondent), Clerk of Court II, Shari'a Circuit Court (SCC), Molundo-Maguing-Ramain-Buadiposo-Bubong, Lanao del Sur, for the period from January 1, 2008 to February 28, 2014.

Factual Antecedents:

In the December 15, 2014 Memorandum[2] for the Court Administrator, the audit team submitted its observations, findings, and recommendation to preventively suspend respondent without pay and to submit his written explanation for the imputed offenses, to wit.:

3.a. Removal of office records, financial and case records, from the office and keeping them in their residence;

3.b. Failure to transfer some of the court case records in the office premises despite the audit team's instructions and the memorandum, from the presiding judge;

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[1] *Rollo*, pp. 4-12.

[2] Id. at 10.

3.c. Skipping the four (4) [pages of Official Receipts] ORs with serial numbers 11772062 to 11772065 and 11772161 to 11772164 for [Judiciary Development Fund] JDF and [Special Allowance for Judiciary Fund] SAJF, respectively;

3.d. Detaching the three (3) copies (original, duplicate and triplicate) of OR No. 11772165 and the unused original copy of OR No. 11772166 from the booklet;

3.e. Failure to report and remit the collections under OR No. 11772066 and 11772165 in the amount of ₱180.00 and ₱820.00, respectively, both dated 4 April 2012;

3.f. Antedating OR Nos. 11772210 and 11772211 for 19 March 2010 and 28 June 2013, respectively, when in fact said series of ORs were previously found unissued as of 4 March 2014, to make it appear that the LRF collections [were] properly receipted;

3.g. Non-submission of Monthly Financial Reports.[3]

The OCA, in its December 15, 2014 Memorandum,[4] adopted the recommendations of the audit team and endorsed the same for approval of the Court. We approved the recommendations of the OCA in Our February 23, 2015 Resolution.[5]

In compliance response to Our February 23, 2015 Resolution, respondent submitted the following: (1) Letter-Comment dated April 24, 2015;[6] (2) Manifestations dated July 27, 2015;[7] (3) Letter dated September 10, 2015;[8] and (4) Letter dated April 19, 2016.[9]

In his Letter-Comment[10] dated April 24, 2015, respondent interposed the following defenses:

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[3] Id.

[4] Id. at 1-3.

[5] Id. at 46-49.

[6] Id. at 50-55.

[7] Id. at 114-119.

[8] Id. at 124-127.

[9] Id. at 145-149.

[10] Id. at 50-55.

Respondent claimed that he brought home various case records for purposes of completion and that this was with the prior knowledge and conformity of Presiding Judge Abdulhalim L. Saumay (Judge Saumay).[11] Respondent also denied that he did not comply with the directive to return the case records to the court. He emphasized that he returned the subject case records and placed them inside the court's steel cabinet.

As to the allegations that he skipped four (4) pages of official receipts for the JDF and SAJF, and detached three (3) copies (original, duplicate and triplicate) of Official Receipt (O.R.) No. 11772165, and the unused original copy of O.R. No 11772166 from the booklet, respondent averred that these were due to mere inadvertence on his part.[12] He explained that he instructed one of the court personnel to deliver the official receipt booklets for the JDF and SAJF to the office at Molundo, Lanao del Sur.

However, instead of delivering the booklets, said court personnel allegedly detached the official receipts for the JDF and SAJF and inadvertently skipped four (4) pages of official receipts in the JDF and SAJF booklets. The unused original copy of O.R. No 11772166 was detached from the SAJF booklet, which was delivered by the court personnel to the audit team together with the three (3) copies (original, duplicate and triplicate) of O.R. No. 11772165.[13] Ironically, respondent faulted the audit team for allegedly failing to make a proper inventory of official receipts and to notify him about the missing official receipts.

Anent the allegation that respondent failed to report and remit collections, he admitted that there was a delay in the reporting of collections under O.R. Nos. 11772066 and 11772165 but that the collections and remittances under the ORs have already

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[11] Id. at 50.

[12] Id. at 52-53.

[13] Id. at 52.

been reported and remitted to the Accounting Division of the OCA.[14]

As to the alleged antedating of official receipts, respondent admitted antedating O.R. Nos. 11772210 and 11772211 for March 19, 2010 and June 28, 2013, respectively.[15] However, by way of defense, he averred that he was forced to antedate the receipts in order to complete the Legal Research Fund (LRF) issuances considering that the use of official receipts issued by the Supreme Court for the LRF is prohibited.[16]

As to his non-submission of monthly financial case reports, respondent argued that it was attributable to the low caseload of the court.[17] He later submitted the monthly financial reports of the court covering the period from January 1, 2008 to February 28, 2014, which is the period covered by the audit.[18]

Respondent reiterated the foregoing defenses in his Manifestations dated July 27, 2015,[19] Letter dated September 10, 2015[20] and Letter dated April 19, 2016,[21] and raised other additional claims to address the charges against him.

Meanwhile, this Court, in its December 7, 2015 Resolution,[22] referred respondent's Manifestations dated July 27, 2015, and Letter dated September 10, 2015 to the OCA for evaluation, report and recommendation.

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[14] Id. at 53.

[15] Id. at 54.

[16] Id.

[17] Id.

[18] Id.

[19] Id. at 114-119.

[20] Id. at 124-127.

[21] Id. at 145-149.

[22] Id. at 129-130.

Report and Recommendation of the OCA:

July 5, 2016 Memorandum:

In its July 5, 2016 Memorandum,[23] the OCA found respondent guilty of Gross Neglect of Duty, Dishonesty and Grave Misconduct and recommended his suspension from office for one (1) year without pay "with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely."[24] The OCA ratiocinated in this wise:

First, respondent could not make up his mind with respect to the charge that he removed office, financial and case records, from the office and kept them in his residence. He initially offered a mere denial but thereafter gave a qualified admission that the bringing of case records to his home was with the consent of Judge Saumay. He again gave another reason in his letter dated 10 September 2015 stating that he took the case records home because there was no electric power at that time in Molundo, Lanao del Sur where his office is stationed and he used his computer at his home in Marawi City to encode the orders. This reason appears to be a mere afterthought and puts into question respondent's credibility.

Second, respondent explained that he avoided commenting on the memorandum issued to him by Judge Saumay as required by the audit team because he did not want to have any conflict with Judge Saumay. Further, instead of directly answering the allegation, he cited as an excuse the fact that he wrote the majority of the orders of Judge Saumay per instruction of Judge Saumay.

Such failure to comment and his silence on the allegations are detrimental to his cause.

It is the natural instinct of man to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations, Hence, silence in such cases is almost always construed as an implied admission of the truth thereof.

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[23] Id. at 132-143.

[24] Id. at 143.

Third, while respondent admitted that he brought home some of the records albeit with the consent of Judge Saumay, he however did not present any court order to support his claim. This is contrary to Section 14 of Rule 136 of the Rules of Court mandating that *"(n)o record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules. x x x."*

Fourth, respondent raised the defense that it was a personnel of the court who was responsible for the skipping of four (4) [pages] of official receipts for the JDF and SAJF, and the removal of three (3) copies (original, duplicate and triplicate) of O.R. No. 11772165 and the unused original copy of O.R. No. 11772166.

The finger-pointing deserves scant consideration. For one, respondent did not even name the personnel who was responsible. Secondly, as clerk of court, he is designated as the custodian of the court's funds and revenues, records, properties and premises, and shall be liable for any loss or shortage thereof. Finally, and more importantly, as clerk of court, he is chiefly responsible for the shortcomings of his subordinates to whom administrative functions normally pertaining to them are delegated. Thus, respondent cannot exculpate himself from the anomalies by just passing the blame to another employee.

Fifth, with respect to the unremitted collections, a perusal of Annex "C" of respondent's comment will reveal that the report was dated May 11, 2012 while the SAJF and JDF deposit slips were both dated April 5, 2012. Based on these documents, the April 4, 2012 collections amounting to P180.00 and P820.00 under O.R. Nos. 11772666 and 11772165, respectively, were remitted and reported on April 5, 2012 and May 11, 2012, respectively. However, the April 2012 monthly report of JDF and SAJF presented by respondent during the conduct of the audit showed no such transactions. The finding is supported by the JDF and SAJF subsidiary ledgers of the Accounting Division, FMO, OCA, which bear no collection and deposit in the said month. The said ledgers also indicate that the aforesaid transactions were reported only in 2015. Likewise, the date in the machine validation in the JDF and SAJF deposit slips is March 5, 2014 and not April 5, 2012. This gives rise to the conclusion that respondent falsified the date in the deposit slips to make it appear that the collections were remitted and reported in 2012.

Sixth, respondent's admission of antedating the official receipts constitutes dishonesty defined as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of

honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud deceive or betray."

Finally, with respect to his non-submission of the monthly financial report, respondent's justification *i.e.*, the low caseload of his court, is patently without merit as paragraph 3 of OCA Circular No. 112-2004 categorically mandates:

3. In case no transaction is made within the month, written notice thereof shall be submitted to the aforesaid Office **no later than the 10th day of the succeeding month**.

x x x x x x x x x

In the present case, dismissal from the service may be too harsh considering the following circumstances, to wit: (1) this is respondent's first infraction after nineteen (19) years of service in the judiciary; and (2) he remitted, albeit belatedly, the total amount of his shortages before the complaint against him was filed. x x x[25] (Emphases in the original)

In view of the foregoing findings, the OCA, in its July 5, 2016 Memorandum, submitted the following recommendations to the Court:

1. respondent Aninding Alauya, Clerk of Court II, SCC, Molundo-Maguing-Ramain-Buadiposo-Bubong, Molundo, Lanao del Sur, be found **GUILTY** of gross neglect of duty, dishonesty and grave misconduct; and

2. respondent Alauya be **SUSPENDED** for one (1) year without pay with a **STERN WARNING** that a repetition of the same or similar infraction shall be dealt with more severely.[26]

Meanwhile, this Court received respondent's Letters dated April 19, 2016[27] and February 2, 2017[28] relative to the instant administrative case against him. The Court also received a copy

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[25] Id. at 138-142.

[26] Id.

[27] Id. at 145-149.

[28] Id. at 166-175.

of a letter-complaint dated September 1, 2016 against respondent from various court personnel[29] from SCC Molondo, Lanao del Sur.

In a July 24, 2017 Resolution, this Court referred the letters to the OCA for evaluation, report and recommendation.

November 17, 2017
Memorandum:

In compliance with the July 24, 2017 Resolution of the Court, the OCA issued a Memorandum[30] dated November 17, 2017 finding that respondent's letters did not warrant any modification of the recommendations earlier cited in its July 5, 2016 Memorandum, thus:

> The allegations deserve scant consideration.
>
> *First*, while respondent harmonized his two (2) conflicting reasons in bringing home the case records, *i.e.*, to help write lacking orders on motions filed and on interlocutory matters, because of the inability of their Presiding Judge to write in the English language and due to the lack then of electric power in their office, the fact remains that there was no court order to support his claim contrary to Section 14 of Rule 136 of the Rules of Court.
>
> *Second*, with respect to his argument that had he known earlier of the scheduled audit, he would have delivered the case records to the office at least a day before, the same is untenable as it is respondent's duty to return the records to the court especially so in the instant case where there was no authority in writing for respondent to do so.
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> *Third*, respondent also tries to explain his failure to name the personnel by stating that he took responsibility for the negligence of his personnel and because he actually ratified the said act. However, while respondent as clerk of court is chiefly responsible for the lapses of his subordinates

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[29] Id. at 153. The complainants are the following: Judge Abdulhalim L. Saumay, Interpreter Saripasa D. Ditucalan, Clerk II Rolando P. Mangantang, Stenographer Soraya E. Marohombsar, Clerk of Court Abdulcader A. Gamor, Interpreter Farina M. Alauya, Judge Samanodin L. Ampaso, and Judge Abuali P. Cali.

[30] Id. at 202-206.

to whom administrative functions normally pertaining to them are delegated, he should still have named the alleged employee to give his allegations a semblance of truth.

Finally, with respect to respondent's other allegations, it appears that he ascribes ill motive on the part of the audit team, but he has not presented any evidence to prove his claim. As stated in the previous memorandum, in the absence of evidence ascribing any ill motive on the part of the audit team, it logically follows that there was no such improper motive and that, corollarily, their report is worthy of full faith and belief.

Thus, this Office does not find anything in respondent's letters that would warrant the modification of our recommendation in our Memorandum dated 08 July 2016 that respondent to be found guilty of gross neglect of duty, dishonesty and grave misconduct and consequently be suspended for one (1) year without pay with a stern warning that a repetition of the same or similar infraction shall be dealt with more severely.[31]

The OCA also noted that the September 1, 2016 complaint-letter against respondent raised matters which were wholly unrelated to the instant administrative case and that the charges raised therein be resolved in a separate administrative case against respondent for Dishonesty and Conduct Prejudicial to the Best interest of the Service, and Grave Misconduct.

The OCA, in its Memorandum dated November 17, 2017, then made the following recommendations:

IN VIEW OF THE FOREGOING, it is respectfully recommended for the consideration of the Honorable Court that:

1. the (a) letters dated 19 April 2016 and 02 February 2017 of respondent Aninding Alauya, Clerk of Court II, SCC, Molundo-Maguing-Ramain-Buadiposo-Bubong, Molundo, Lanao del Sur, and (b) letter dated 01 September 2016 of Judge Abdulhalim L. Saumay, et al., be **NOTED**;

2. respondent Aninding Alauya be found **GUILTY** of gross neglect of duty, dishonesty and grave misconduct and be **SUSPENDED** for

[31] Id.

one (1) year without pay with **STERN WARNING** that a repetition of the same or similar infraction shall be dealt with more severely; and,

3. the letter dated 01 September 2016 of Judge Abdulhalim L. Saumay, et al., be docketed as a **SEPARATE COMPLAINT** against respondent Aninding Alauya for dishonesty, conduct prejudicial to the best interest of the service and grave misconduct, and respondent Aninding Alauya be required to **COMMENT** thereon.[32]

Our Ruling

We adopt the findings of the OCA that respondent failed to perform his duties with the degree of diligence and competence expected of a Clerk of Court and its recommendation to suspend him for one (1) year without pay.

Clerks of Court perform vital functions in the administration of justice. Their functions are imbued with public interest that any act which would compromise, or tend to compromise, that degree of diligence and competence expected of them in the exercise of their functions would destroy public accountability and effectively weaken the faith of the people in the justice system.[33]

Notably, as the designated custodian of the court's properties, it was incumbent on respondent to ensure that relevant rules are followed for their proper safekeeping and organization. In this regard, Section 14, Rule 136 of the Rules of Court provides that "[n]o record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules." On a related matter, it also bears stressing that Article 226[34] of the Revised Penal Code punishes any public officer

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[32] Id. at 206.

[33] *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan,* 753 Phil. 31, 37 (2015).

[34] Article 226 of the Revised Penal Code states: ARTICLE 226. Removal, Concealment or Destruction of Documents. — Any public officer who shall remove, destroy or conceal documents or papers officially entrusted to hint, shall suffer:

who removes, conceals or destroys documents or papers officially entrusted to him or her.[35]

Here, respondent was charged with the proper safekeeping and management of all court records under his custody. While he proffered several, albeit, conflicting defenses as grounds to exculpate himself from liability, the fact remains that there was no court order to support any of his claims contrary to Section 12, Rule 136 of the Rules of Court. Clearly, he displayed neglect of duty when he removed financial and case records from the court without proper authority.

Respondent was equally remiss in skipping four (4) pieces of official receipts for the JDF and SAJF, and removing three (3) copies (original, duplicate and triplicate) of O.R. No. 11772165 and the unused original copy of O.R. No. 11772166. He attributed these shortcomings to a court personnel but without identifying the said personnel. He cannot, however, escape liability by shifting the blame to his subordinates. As the Clerk of Court, he is the designated custodian of court properties, particularly in this case, the official receipts for the JDF and SAJF. Therefore, he should be made primarily liable for any loss, shortage or impairment thereof.[36]

Significantly, respondent's unauthorized removal and improper safekeeping of court records were compounded by acts of graver malfeasance — the incurring of shortages, and

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1. The penalty of *prisión mayor* and a fine not exceeding 1,000 pesos, whenever serious damage shall have been caused thereby to a third party or to the public interest.
2. The penalty of *prisión correccional* in its minimum and medium periods and a fine not exceeding 1,000 pesos, whenever the damage caused to a third party or to the public interest shall not have been serious.

In either case, the additional penalty of temporary special disqualification in its maximum period to perpetual special disqualification shall be imposed.

[35] *Re: Administrative Matter No. 05-8-244-MTC, Los Baños, Laguna*, 569 Phil. 333, 345 (2008).

[36] *Office of the Court Administrator v. Bantiyan*, 811 Phil. 644, 657 (2017).

delay in the remittance of collections, as well as the belated submission of monthly financial reports on the same.

It is well-settled that Clerks of Court are tasked with the collections of court funds. As they are not authorized to keep funds in their custody, they are duty bound to immediately deposit with authorized government depositories their collections on various funds.[37] Such functions are highlighted by OCA Circular Nos. 50-95[38] and 113-2004[39] and Administrative Circular No. 35-2004[40] which mandate Clerks of Court to timely

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[37] *Office of the Court Administrator v. Fontanilla*, 695 Phil. 142, 148-149 (2012).

[38] Entitled "COURT FIDUCIARY FUNDS" (November 1, 1995), pertinent portions of which provide:

(4) All collections from bailbonds, rental deposits, and other fiduciary collections shall be deposited within twenty[-]four (24) hours by the Clerk of [C]ourt concerned, upon receipt thereof, with the Land Bank of the Philippines [LBP].

x x x x x x x x x

(9) Within two (2) weeks after the end of each quarter, all Clerks of Court are hereby required to submit to the Chief Accountant of the Supreme Court, copy furnished the Office of the Court Administrator, a quarterly report indicating the outstanding balance maintained with the depositary bank or local treasurer, and the date, nature and amount of all deposits and withdrawals made within such period.

x x x x x x x x x

[39] OCA Circular No. 113-2004 provides:

1. The Monthly Reports of Collections and Deposits for the Judiciary Development Fund (JDF), Special Allowance for the Judiciary (SAJ) and Fiduciary Fund (FF) shall be:

x x x x x x x x x

1.3. Sent not later than the 10th day of each succeeding month to [The Chief Accountant, Accounting Division, Financial Management Office, Office of the Court Administrator, Supreme Court of the Philippines, Taft Avenue, Ermita, Manila]

x x x x x x x x x

Henceforth, all Clerks of Court shall only submit monthly reports for the three (3) funds, namely: JDF, SAJ, and FF.

[40] Entitled "GUIDELINES IN THE ALLOCATION OF THE LEGAL FEES COLLECTED UNDER RULE 141 OF THE RULES OF COURT, AS AMENDED, BETWEEN THE SPECIAL ALLOWANCE FOR THE

deposit judiciary collections as well as to submit monthly financial reports on the same.

These circulars are mandatory in nature and are designed to promote full accountability for funds received by the courts. Notably, any failure or even delay in the remittance of collection has been perceived as a serious breach of duty to the public.[41] These acts deprive the courts of the opportunity to use the fund as well as the interest thereon which may have been earned if the amounts were timely and/or properly remitted or deposited to authorized government depositories.[42]

Clearly in this case, respondent failed to perform with utmost diligence his financial and administrative responsibilities. As correctly found by the OCA, and as readily admitted by respondent himself, he was remiss in his duties in remitting the court collections on time, and regularly submitting his

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JUDICIARY FUND AND THE JUDICIARY DEVELOPMENT FUND" (August 12, 2004), pertinent portions of which provide:

PROCEDURAL GUIDELINES

I. Judiciary Development Fund

x x x x x x x x x

3. Systems and Procedures. —

x x x x x x x x x

c) In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. — The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch in the savings account opened by said courts for the account of the Judiciary Development Fund. x x x.

x x x x x x x x x

II. Special Allowance for the Judiciary Fund

x x x x x x x x x

3) Systems and Procedures:

x x x x x x x x x

c) In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. — The daily collections for the special allowance for the judiciary fund in these courts shall be deposited everyday with the nearest lbp branch in the savings account opened by the court for the account of the SAJ. x x x.

x x x x x x x x x

See also *Office of the Court Administrator v. Viesca*, 758 Phil. 16 (2015).

[41] *Office of the Court Administrator v. Fontanilla*, supra note 37.

[42] *Office of the Court Administrator v. Melchor, Jr.*, 741 Phil. 433 (2014).

monthly reports. He also incurred shortages amounting to ₱1,000.00.

Respondent cited several reasons to justify his shortcomings but which we find to be unacceptable. To be clear, in the event that daily deposits of cash collections are not feasible, the same shall be made at the end of every month[43] In fact, even when no transaction is made within the month, written notice thereof shall be submitted no later than the 10th day of the succeeding month.[44] Having failed to do so, respondent cannot now escape liability from his own inaction.

Notably, while the noted shortages were already restituted, respondent's failure to remit or deposit the correct amount upon collection thereof was already prejudicial to the court as it did not earn interest income on the said amount, or was otherwise deprived of using the same. Thus, even when he has restituted the funds, his unwarranted failure to fulfill his responsibilities deserve administrative sanction by the Court, and not even payment, as in this case, of the collection of the shortages will exempt him from liability.[45]

Anent the penalty to be imposed on respondent, the Revised Rules of Administrative Cases in the Civil Service (RRACCS) provides that Gross Neglect of Duty, Grave Misconduct, and Serious Dishonesty are grave offenses which merit the penalty of dismissal from service even for the first offense.[46]

However, in determining the penalty to be imposed, the Court considers the facts of the case and such factors which may serve as mitigating circumstances. In this regard, respondent's length of service in the judiciary for nineteen (19) years can be considered in his favor. Moreover, this Court notes that

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[43] *Office of the Court Administrator v. Bantiyan*, supra, note 36 at 656.

[44] Paragraph 3 of OCA Circular No. 112-2004.

[45] *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan,* supra, note 33.

[46] See Section 46 of the RRACCS. See also *Office of the Court Administrator v. Viesca*, supra, note 40.

respondent has been preventively suspended since 2015. In view of the foregoing, the imposition of a penalty of suspension for a period of one (1) year is proper.

On another matter, we also agree with the findings of the OCA that the September 1, 2016 complaint-letter against respondent raised matters which are unrelated to the instant case. Thus, all charges raised in the complaint-letter should be resolved in a separate administrative case against respondent for his alleged infractions of Dishonesty and Conduct Prejudicial to the Best Interest of the Service, and Grave Misconduct.

WHEREFORE, Aninding M. Alauya, Clerk of Court II of the Shari'a Circuit Court, Molundo-Maguing-Ramain-Buadiposo-Bubong, Molundo, Lanao del Sur, is found **GUILTY** of Gross Neglect of Duty, Dishonesty and Grave Misconduct and is hereby **SUSPENDED** without pay for a period of one (1) year effective immediately, with a **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

The letter dated September 1, 2016 of Judge Abdulhalim L. Saumay, et al., shall be docketed as a **SEPARATE COMPLAINT** against respondent, to be raffled among the Members of the Court for resolution.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

EN BANC

[A.M. No. RTJ-15-2437. December 9, 2020]
(Formerly OCA IPI No. 14-4351-RTJ)

AAA,[*] *Complainant, v.* **JUDGE JAIME E. CONTRERAS, Regional Trial Court, Br. 25, Naga City, Camarines Sur,** *Respondent.*

D E C I S I O N

***PER CURIAM*:**

A judge is not above the law.[1] When a magistrate refuses to submit to judicial processes by becoming a fugitive from justice, he disrespects the law he is sworn to uphold and protect. By turning into a transgressor of the law, he brings disrepute to his office and impairs public confidence in the Judiciary.

Antecedents

This administrative case stemmed from a complaint-affidavit dated 24 November 2014, filed by AAA (complainant) before the Office of the Court Administrator (OCA). Complainant accused Judge Jaime E. Contreras (respondent), Presiding Judge of Branch 25, Regional Trial Court (RTC) of Naga City, Camarines Sur of sexual molestation and rape that allegedly occurred from 1994 to 2014.[2]

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[*] The identity of the victim or any information which could establish or compromise her identity, including the names of her immediate family or household members, and the *barangay* and town of the incident, are withheld pursuant to SC Amended Administrative Circular No. 83-2015.

[1] *See Office of the Court Administrator v. Yu*, A.M. Nos. MTJ-12-1813, 12-1-09-MeTC, MTJ-13-1836, MTJ-12-1815, OCA IPI Nos. 11-2398-MTJ, 11-2399-MTJ, 11-2378-MTJ, 12-2456-MTJ & A.M. No. MTJ-13-1821, 22 November 2016 [Per Curiam].

[2] *Rollo*, p. 1.

Complainant averred that she is the acknowledged illegitimate daughter of respondent, having been born out of wedlock on 01 September 1980. Through the intervention of relatives, complainant first met her father, herein respondent, in the summer of 1994. He invited her to live with him and his family in Naga City, and offered to send her to school.[3]

During the early months of her stay with respondent and his family, complainant observed that he was very affectionate towards her. Soon thereafter, however, the affection turned into sexual molestation.

One afternoon in 1994, after complainant arrived from school, and while her younger half-brothers were playing outside, respondent asked their housemaid to buy something from the store, leaving the two of them alone in the house. Respondent then started touching her private parts. She protested, but he explained that what he was doing was alright and told her to just trust him.[4] In another incident, while her stepmother was working overtime and their maid was watching over her half-brothers, respondent insisted on going inside the bathroom with complainant while she bathed.[5]

By 1995, incidents of respondent's inappropriate behavior became worse and more frequent, especially whenever complainant's stepmother was not around. One time, respondent asked complainant to show him her vagina. When she refused, he told her it was normal for a father to inspect his daughter's genitals and urged her to just trust him. Eventually, respondent judge succeeded on many occasions to inspect her genitals.[6]

When complainant turned sixteen (16) years old, respondent taught her how to kiss so that she would not be ignorant of kissing if she were to have a boyfriend. While kissing her, he

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[3] *Id.* at 4.

[4] *Id.* at 1-2.

[5] *Id.* at 2.

[6] *Id.*

would also touch her private parts. These incidents of kissing and touching would soon become a normal occurrence and were repeated by respondent through the years.[7]

In September 2004, respondent brought complainant to Moraville Hotel. When he noticed that complainant looked frightened, he asked her if she no longer trusted her father. Respondent ordered her to undress and complainant timidly obeyed. Eventually, respondent inserted his penis into her vagina. Thereafter, he told her not to tell anyone lest she wanted to bring shame to their entire family.[8]

Years later, complainant would go on to take up nursing at the Naga College Foundation. Respondent would often fetch her from school in the guise of bringing her out to eat. He would even use a secret code in the vernacular, *magkakan*, meaning to eat, to refer to these encounters.[9] In truth, he would bring her to a motel for sex. After one such incident, respondent took pictures of the complainant while she was naked. He then warned her that if she told anyone of their sexual relations, he would print and spread these naked pictures.[10]

After another encounter at a motel sometime in 2013, complainant told respondent she wanted to put an end to their illicit relationship. Respondent refused and warned complainant that he would kill himself if she told anyone about their relationship.[11]

In January 2014, complainant received a text message from an unknown sender, asking why her naked pictures are saved in respondent's cellular phone. When she confronted respondent, he told her they were both victims of the housemaid's meddling with his belongings. Respondent assured her that he already

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[7] *Id.* at 2-3.

[8] *Id.* at 3-4.

[9] *Id.* at 4.

[10] *Id.*

[11] *Id.* at 5.

warned the housemaid not to tell anyone about the pictures; otherwise, he would send the housemaid to jail.[12]

On 30 July 2014, respondent brought complainant to the Moraville Hotel again to have sex. On their way home, they had a heated argument about the naked pictures. Subsequently, complainant finally decided to end respondent judge's control over her.[13]

Based on the foregoing allegations, complainant filed criminal complaints against respondent for seven (7) counts of acts of lasciviousness and violation of Republic Act No. 7610, two (2) counts of rape, and one (1) count of attempted rape before the Office of the City Prosecutor of Naga City. She also filed a complaint for one (1) count of acts of lasciviousness with the Office of the Provincial Prosecutor of Camarines Sur, and one (1) count of rape with the Office of the City Prosecutor of Legazpi City.[14] In addition, complainant also filed the present administrative case.

In his comment dated 25 February 2015, respondent denied complainant's accusations. He maintains that the cases are all based on vicious lies fabricated by his 34-year old illegitimate daughter and her drug-user extortionist husband, who conspired with other disgruntled lawyers.[15]

Respondent argued that from the time the alleged sexual abuse started in 1994, complainant never left his care and relied on him for all her educational and financial needs. When the first rape incident supposedly occurred in September 2004, complainant was already 24 years old, married, and over the age of discernment. If her accusations were true, complainant should have protested because she was mature enough to know that having sex with her father was wrong.[16] Respondent further claimed that the filing of cases against him was motivated by

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[12] *Id.*

[13] *Id.* at 6.

[14] *Id.* at 7.

[15] *Id.*

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

money, as well as complainant's extreme hatred and jealousy towards his wife, their housemaid, and her half-brothers.[17]

Findings and Recommendations of the OCA

In its Report and Recommendation dated 28 July 2015, the OCA found the charges, if proven, may warrant respondent's dismissal from service. However, since the criminal cases were still pending at that time, further evaluation of this administrative case was held in abeyance until the same were decided. In the meantime, respondent was preventively suspended, without salary and other benefits.[18]

On 20 November 2019, this Court directed the OCA to submit a status report on the present administrative matter.[19] Upon verification, the OCA reported that the criminal cases filed against respondent were all transferred to Branch 41, RTC of Daet, Camarines Norte, a designated Family Court.

The OCA also found that the trial court had already issued orders of arrest against respondent. However, these orders of arrest were returned unserved because respondent could no longer be located or his whereabouts were unknown. Thus, the trial court was constrained to send to the archives the criminal cases since respondent managed to successfully evade arrest for several years.[20]

In its Report and Recommendation, the OCA recommended the dismissal of respondent from service, forfeiture of his retirement benefits, except accrued leave credits, cancellation of his civil service eligibility, and perpetual disqualification from holding public office. By becoming a fugitive from justice, respondent exhibited deliberate and continuous refusal to comply with lawful orders of the court, the OCA said.[21]

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[17] *Id.* at 10.

[18] *Id.* at 2.

[19] *Rollo*, Resolution dated 20 November 2019.

[20] *Rollo*, OCA Report and Recommendation dated 01 June 2020.

[21] *Id.*

Ruling of the Court

We are fully in accord with the OCA's recommendation. Dismissal from service is an appropriate penalty for a judge who becomes a fugitive from justice.

A judge who deliberately and continuously fails and refuses to comply with lawful orders or resolutions is guilty of grave misconduct. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. Misconduct is considered grave where the elements of corruption, clear intent to violate the law, or flagrant disregard of established rules are present.[22]

By becoming a fugitive from justice, respondent committed grave misconduct. Moreover, his clear intent to violate the law and flagrant disregard of the legal processes are not merely indicative of his reprehensible conduct; worse, his continued evasion of the orders for his arrest makes it appear that he is immune to or above ordinary judicial processes, thus bringing dishonor to the Judiciary.[23]

Respondent's flight from justice is fully incompatible with his judicial office and underscores lack of respect and defiance of the law, in contradiction to the very core of his position. Evasion of arrest is anathema to a career in the Judiciary; it renders respondent unfit and unworthy of the honor and integrity attached to his office.

Obedience to the dictates of the law and justice is demanded of every judge. A sitting magistrate cannot mete out justice when he himself undermines the court's authority. A judge cannot be an exemplar of upholding the law if he refuses to follow a judicial directive. In the Judiciary, moral integrity is more than a cardinal virtue, it is a necessity. The exacting standards of

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[22] *Anonymous Complaint v. Dagala*, A.M. No. MTJ-16-1886, 25 July 2017, 814 Phil. 103 (2017) [Per Curiam].

[23] *See supra* at note 1.

conduct demanded of judges are designed to promote public confidence in judicial processes.[24]

A judge embodies the law; he cannot be above it. Being a magistrate means comporting oneself in a manner consistent with the dignity of the judicial office, and not committing any act that erodes public confidence in the Judiciary.[25] As the embodiment of the people's sense of justice, a judge must be studiously careful to avoid even the slightest infraction of the law, lest it be a demoralizing example to others.[26] Thus, as a visible representation of the law, respondent should have conducted himself in a manner that would merit people's respect to him, in particular, and to the Judiciary, in general.[27]

We take note that this is not the first time that respondent failed to act beyond reproach and was found guilty of an administrative infraction. This, if only to highlight the penchant of respondent in disregarding laws and proper procedure. In *Re: Judge Jaime E. Contreras*,[28] the Court found respondent guilty of dishonesty for failure to disclose in the personal data sheet (PDS) he submitted when he applied as judge, that he was charged and found guilty of simple misconduct by the Office of the Ombudsman. The Court suspended him for a period of one (1) year, with an explicit warning that repetition of a similar act will be dealt with more severely.

Grave misconduct is punishable by the penalty of dismissal even if committed for the first time.[29] Thus, the appropriate penalty against respondent for evading the orders of arrest against him is dismissal from service, which carries with it the forfeiture

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[24] *Soria v. Villegas*, A.M. No. RTJ-03-1812, 19 November 2003 [Per Curiam].

[25] *Supra* at note 1.

[26] *See Alumbres v. Caoibes, Jr.*, A.M. No. RTJ-99-1431 (Formerly OCA IPI No. 97-387-RTJ), 23 January 2002, 425 Phil. 55 (2002) [Per J. Melo].

[27] *In Re: Judge Jaime E. Contreras*, A.M. No. RTJ-16-2452, 09 March 2016 [Per J. Reyes].

[28] *Id.*

[29] *Valdez v. Alviar*, A.M. No. P-20-4042, 28 January 2020 [Per Curiam].

of all retirement benefits, except accrued leave credits, and with perpetual disqualification from holding public office or re-employment in any branch of the government, including government-owned and controlled corporations.

Further, We find that respondent's refusal to follow lawful orders and evasion of arrest are glaring proofs of his disinterest to remain in the Judiciary.[30] While this rule traditionally refers to directives of the Supreme Court, it finds relevant application to judges who evade arrest while facing criminal charges before the lower courts.

The foregoing notwithstanding, this Court shall refrain from making any pronouncements as regards the serious accusations of rape and sexual abuse against respondent since these matters remain pending before the trial court.

WHEREFORE, the foregoing premises considered, the Court finds respondent Judge Jaime E. Contreras **GUILTY** of grave misconduct. He is hereby **DISMISSED** from the service, with forfeiture of all retirement benefits, except accrued leave credits, and with perpetual disqualification from holding public office or re-employment in any branch of the government, including government-owned and controlled corporations.

The case against respondent Judge Jaime E. Contreras is **REFERRED** to the Office of the Bar Confidant for the purpose of initiating disbarment proceedings against him. Let a copy of this Decision be included in said respondent's files that are with the Office of the Bar Confidant, the Office of the Court Administrator for distribution to all courts, and the Integrated Bar of the Philippines.

SO ORDERED.

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

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[30] *Office of the Court Administrator v. Amor*, A.M. No. RTJ-08-2140, 07 October 2014 [Per J. Perlas-Bernabe].

EN BANC

[A.M. No. RTJ-21-005. December 9, 2020]
(Formerly A.M. No. 20-11-161-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *Complainant, v.* **HON. EVELYN A. ATIENZA-TURLA, Presiding Judge, Branch 40, Regional Trial Court, Palayan City, Nueva Ecija,** *Respondent.*

D E C I S I O N

GAERLAN, *J.*:

The speedy disposition of cases in our courts is a primary aim of the Judiciary, so that the ends of justice may not be compromised and the Judiciary will be true to its commitment to provide litigants their constitutional rights to a speedy trial and a speedy disposition of their cases.[1]

This administrative matter stemmed from the judicial audit and physical inventory of cases conducted in the Regional Trial Court (RTC), Palayan City, Nueva Ecija, on January 31, 2019 to February 23, 2019 pursuant to Travel Order No. 12-2019 dated January 18, 2019. The court was formerly presided by Hon. Evelyn A. Atienza-Turla, who has compulsory retired on March 18, 2019, and is now presided by Hon. Eleanor Teodora Marbas-Vizcarra in an acting capacity. The report of the judicial audit team disclosed that the court had a total caseload of 833 cases, 666 of which are criminal cases and 167 are civil cases.[2] The audit team found out that two criminal cases[3] were still submitted for decision but are beyond the period to decide

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[1] *Re: Report on the Judicial Audit Conducted in the RTC-Br. 37, Lingayen, Pangasinan*, 391 Phil. 222, 227 (2000).

[2] *Rollo*, p. 1. Judge Evelyn A. Atienza-Turla availed of her terminal leave from November 1, 2018 until the effectivity of her compulsory retirement.

[3] Id. at 2. Criminal Case Nos. 1626-P-06, 1721-P-06 (consolidated cases) and Criminal Case No. 2168.

ordinary cases. A number of criminal cases[4] with pending incidents for resolution had not been acted upon despite considerable length of time to resolve. There were also criminal cases[5] that were ripe for archiving and issuance of alias warrant but were not acted upon within a reasonable time.

In civil cases, the audit team discovered that there are 18 cases[6] submitted for decision which are beyond the period to decide, and without any proof of extension requested from the Office of the Court Administrator (OCA). The report also revealed that several cases[7] have no initial action or further action/setting. Meanwhile, some civil cases[8] have pending motions/incidents which have yet to be acted upon at the time of the audit. Moreover, records show that there are numerous civil cases[9] decided by Judge Atienza-Turla, which were beyond the period to decide without proof of request for extension of time.

The audit team likewise observed that the court's case records were mismanaged and unorganized, to wit:

1. No compliance with the continuous trial as manifested by the delays in the progress of most of the cases pending;

2. Lack of corresponding orders;

3. Failure to usually state the status of the cases in the notices of hearing/orders;

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[4] Id. at 2-3. Criminal Case Nos. 3424, 2157, 3582, 2226, 2227, 2228, 2896, 1837, 2538, 2539, 2572, 2564, 3315 and 3316.

[5] Id. at 3. Criminal Case Nos. 3474-P-18, 3445-P-18 and 3406-P-18.

[6] Id. at 3-4. Civil Case Nos. 850, 0236, 315, 0279, 0006, 0892, 0936, 0771, 0642, 0935, 0285, 0599, 0909, 0333, 0336, 0338, 0297 and 0339.

[7] Id. at 4-5. Civil Case Nos. 858-P-16, 0009-P-17, 0786-P-14, 0010-P-18, 0653, 0553, 0912, 1033-P-18, 0288-P-16, 0299-P-17 and 340-P-18.

[8] Id. at 5-6. Civil Case Nos. 906, 0535, 0979, 0534, 0761, 0735, 0867, 0803, 0776, 0753, 321 and 510.

[9] Id. at 6-7. Civil Case Nos. 896, 869, 0946, 0930, 0848, 0856, 0816, 0933, 0944, 0907, 0794, 0333, 0336, 0338, 0339, 0297, 0972, 0950, 0959, 0808, 0877, 0947, 0337, 0334, 0275, 0928, 0879, 982, 327, 955, 0931 and 813.

4. Failure to produce the corresponding minutes and stenographic notes within the reasonable time;

5. Failure to use case indexes to properly monitor the cases and to avoid overlooking pending incidents for action;

6. Lack of pagination;

7. Failure to use detainee's notebooks properly as most are not updated;

8. Errors in the names of the parties and dates of the pleadings and orders by reason of carelessness;

9. Most orders and decisions issued by the court lack proof of mailing since no return card/registry return receipt are attached thereto;

10. Resettings of cases are caused mostly by the court's own initiative by reason of official business and/or absence of the judge; while those caused by the parties are consistently granted; and

11. Failure to use the docket inventory format provided by the OCA as can be downloaded from its official website.[10]

On February 22, 2019, the audit team scheduled an exit conference with the court employees in order to seek explanation and to discuss its factual findings. However, when the audit team arrived in the court at around 8:00 in the morning of said date, no court employee was present with the exception of the utility, Mr. Harold Joseph Mones Rupac. When team requested for the logbook attendance of the court, it was discovered that almost all of the court employees failed to sign therein. The utility was asked about the whereabouts of his officemates, but he simply replied "*nagmarathon po*." The team contacted Ms. Catherine V. Nad, Officer-in-Charge/Branch Clerk of Court on her mobile phone to seek further explanation. She informed them that the court employees were attending a marathon in Cabanatuan City, Nueva Ecija. Thereafter, the audit team took pictures of the office and made photocopies of the logbook as evidence, copies of which are attached to the Judicial Report as annexes.[11]

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[10] Id. at 7-8.

[11] Id. at 8-9.

The OCA's Recommendation

On October 26, 2020, the OCA issued a Memorandum addressed to Chief Justice Diosdado M. Peralta. The memorandum based its findings and recommendations contained in the Judicial Report dated October 2, 2020 of the judicial audit team. The Court Administrator recommended as follows:

1. the instant matter be **RE-DOCKETED** as a regular administrative matter against retired Judge Evelyn A. Atienza-Turla, formerly of Branch 40, RTC, Palayan City, Nueva Ecija;

2. Judge Atienza-Turla be found **GUILTY** of the less serious charge of undue delay in rendering decision or order under Sections 9 and 11, Rule 140 of the Rules of Court, and Rule 1.02 of Canon 1 and Rule 3.05 of Canon 3 of the Code of Judicial Conduct;

3. Considering the retirement of Judge Atienza-Turla which took effect on 18 March 2019, a **PENALTY OF FINE** equivalent to three (3) months salary at the time of her retirement should be imposed, to be deducted from her retirement/gratuity benefits;

4. The following court employees be directed to **EXPLAIN** why they should not be held administratively liable for not being present on the scheduled exit conference last 22 February 2019 and to present their authority, if any, as to their absences on the said date:

   a. Catherine Valdez-Nad (Officer-in-Charge/COC);
   b. Shamin De Guzman-Madrid (Court Interpreter);
   c. Rubentito V. Alomia (Sheriff);
   d. Alma Villanueva-Eubank (Stenographer);
   e. Mary Grace Labiano-Mendoza (Stenographer);
   f. Rosita Reyes-Caramancion (Stenographer);
   g. Mark Joseph Magdaong Legaspi (DEMO);
   h. Mark Bryan Avila Coguiz (Docket Clerk); and
   i. Alejandro Cabico Fabian (Process Server).

5. The Officer-in-Charge be **DIRECTED** to update all corresponding orders, minutes and stenographic notes; to attach to the case records updated indexes of case events and necessary proofs of service/mailing; to expedite the disposition of cases which have been pending in the docket of the court for an unreasonable length of time; to submit quarterly reports on the status of cases which have been pending in

the court docket for a year or more; and to submit quarterly reports on the status of such cases; and

6. The Officer-in-Charge be **DIRECTED** to strictly comply with Administrative Circular No. 76-2007 (Submission of Semestral Docket Inventory Report) and Administrative Circular No. 61-2001 (Revised Rules, Guidelines, and Instructions on Accomplishing Monthly Report of Cases).

RESPECTFULLY SUBMITTED.

We agree with the findings and recommendations of the OCA.

Time and again, the Court has emphasized that the office of a judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of Article III, Section 16 of the Constitution,[12] which guarantees the right to speedy disposition of cases. Likewise, Article VIII, Section 15 (1) of the 1987 Constitution mandates that the first and second level courts should decide every case within three months from its submission for decision or resolution. A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the *Rules of Court* or by the court itself.[13]

Indeed, rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period within which to decide cases is mandatory.[14] The Court has consistently emphasized strict observance of this rule in order to minimize the twin problems of congestion and delay that have long plagued our courts.[15] Any delay in the administration of

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[12] Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

[13] Section 15 (2), Article VIII, 1987 Constitution.

[14] *OCA v. Judge Garcia-Blanco*, 522 Phil. 87, 98 (2006).

[15] Id.

justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case, for, not only does it magnify the cost of seeking justice, it undermines the people's faith and confidence in the judiciary, lowers its standards and brings it to disrepute.[16]

The honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.[17]

Furthermore, failure to render decisions and orders within the mandated period constitutes a violation of Rule 3.05, Canon 3 of the Code of Judicial Conduct, which states:

> Rule 3.05 – A judge shall dispose of the court's business promptly and decide cases within the required periods.

Based on the foregoing provisions of law and jurisprudence, it is evident that Judge Atienza-Turla violated both the Constitution and the Code of Judicial Conduct when she failed to decide numerous cases and resolve pending motions and incidents within the reglementary period. Her failure to do so constitutes gross inefficiency which consequently warrants the imposition of administrative sanctions.

We are not unmindful of the burden of heavy caseloads heaped on the shoulders of every trial judge. But that cannot excuse them from doing their mandated duty to resolve cases with diligence and dispatch. Judges burdened with heavy caseloads should request the Court for an extension of the reglementary period within which to decide their cases if they think they

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[16] Id. at 99.

[17] *Petallar v. Judge Pullos*, 464 Phil. 540, 546 (2004).

cannot comply with their judicial duty.[18] Hence, under the circumstances, all that said judge needed to do was request for an extension of time since this Court has, almost invariably, been considerate with regard to such requests.[19] Judge Atienza-Turla, however, did not avail of such remedy.

As to the imposable penalty, the failure to render decisions and orders within the mandated period constitutes a violation of Canon 3, Rule 3.05 of the Code of Judicial Conduct. Section 9, Rule 140 of the Revised Rules of Court classifies undue delay in rendering a decision or order as a less serious charge punishable under Section 11 (B) of the same Rule, thus:

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B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In this case, considering the number of cases that were left unresolved and undecided, resolved and decided beyond the reglementary period, and motions or pending incidents that were unresolved or unacted upon, the maximum penalty of suspension from office for three (3) months, as recommended by OCA, is in order. However, considering that Judge Atienza-Turla has retired from service on March 18, 2019, a penalty of fine equivalent to three (3) months salary should be imposed.

WHEREFORE, Judge Evelyn A. Atienza-Turla, formerly of Branch 40, Regional Trial Court, Palayan City, Nueva Ecija is hereby found **GUILTY** of the less serious charge of undue delay in rendering decision or order under Section 9, Rule 140 of the Rules of Court, and Rule 3.05 of Canon 3 of the Code

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[18] *Report on the Judicial Audit Conducted in the RTC, Branches 2 and 31, Tagum City*, 492 Phil. 1, 6 (2005).

[19] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 54, Lapu-Lapu City*, 511 Phil. 71, 78 (2005).

of Judicial Conduct. Considering her retirement which took effect on March 18, 2019, a **PENALTY OF FINE** equivalent to three (3) months salary at the time of her retirement is hereby imposed, to be deducted from her retirement/gratuity benefits.

The following court employees are directed to **EXPLAIN** why they should not be held administratively liable for not being present on the scheduled exit conference last February 22, 2019 and to present their authority, if any, as to their absences on the said date:

a. Catherine Valdez-Nad (Officer-in-Charge/COC);
b. Shamin De Guzman-Madrid (Court Interpreter);
c. Rubentito V. Alomia (Sheriff);
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e. Mary Grace Labiano-Mendoza (Stenographer);
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g. Mark Joseph Magdaong Legaspi (DEMO);
h. Mark Bryan Avila Coguiz (Docket Clerk); and
i. Alejandro Cabico Fabian (Process Server).

The Officer-in-Charge is hereby **DIRECTED** to update all corresponding orders, minutes and stenographic notes; to attach to the case records updated indexes of case events and necessary proofs of service/mailing; to expedite the disposition of cases which have been pending in the docket of the court for an unreasonable length of time; to submit quarterly reports on the status of cases which have been pending in the court docket for a year or more; and to submit quarterly reports on the status of such cases. He is further **DIRECTED** to strictly comply with Administrative Circular No. 76-2007 (Submission of Semestral Docket Inventory Report) and Administrative Circular No. 60-2001 (Revised Rules, Guidelines, and Instructions on Accomplishing Monthly Report of Cases).

SO ORDERED.

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

Gesmundo and *Lopez, JJ.*, on official leave.

EN BANC

[G.R. No. 171101. December 9, 2020]

HACIENDA LUISITA, INCORPORATED, *Petitioner*, **LUISITA INDUSTRIAL PARK CORPORATION and RIZAL COMMERCIAL BANKING CORPORATION,** *Petitioners-in-Intervention*, *v.* **PRESIDENTIAL AGRARIAN REFORM COUNCIL, SECRETARY NASSER PANGANDAMAN OF THE DEPARTMENT OF AGRARIAN REFORM, ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA LUISITA, RENE GALANG, NOEL MALLARI, and JULIO SUNIGA and his SUPERVISORY GROUP OF THE HACIENDA LUISITA, INC., and WINDSOR ANDAYA,** *Respondents*.

APPEARANCES OF COUNSEL

Roxas Delos Reyes Laurel Rosario & Leagogo for Hacienda Luisita, Incorporated.

Jorge Cesar M. Sandiego for Luisita Industrial Park Corporation.

The Solicitor General for Department of Agrarian Reform and Presidential Agrarian Reform Council.

Zambrano & Gruba Law Offices for Navarro Amper & Co.

Poblador Bautista Reyes Law Firm for Luisita Industrial Park Corporation.

Law Firm of Diaz Del Rosario & Associates for Rizal Commercial Banking Corporation.

Public Interest Law Center for respondents Rene Galang and AMBALA.

Villaraza & Angangco for Rizal Commercial Banking Corporation.

R E S O L U T I O N

INTING, *J.*:

For the Court's resolution are the following pending incidents arising after the entry in the Book of Entries of Judgments of the Court Decision[1] dated July 5, 2011 in the above-entitled case:

1. Motion[2] for the Payment of Just Compensation dated March 30, 2015 filed by Hacienda Luisita, Incorporated (HLI) which gave rise to collateral incidents, *viz.*:

    a. Manifestation and Motion[3] filed by Presidential Agrarian Reform Council (PARC) and Secretary of the Department of Agrarian Reform (DAR Secretary) dated January 14, 2016, with the following prayers:

        i. for HLI to be directed to furnish the Department of Agrarian Reform (DAR) with (a) certified true copies of the actual transfer documents signed between HLI and each of the beneficiaries, and (b) certified true copies of other documents issued by HLI to the recipients of the homelots (collectively referred to as Transfer Documents) evidencing the award; and

        ii. clarification on selected matters involving the homelots awarded to farmworker-beneficiaries (FWBs).

    b. Comment with Motion to Require Register of Deeds to Furnish Certified True Copies of Documents

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[1] *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.*, 668 Phil. 365 (2011).

[2] *Rollo*, Vol. 13, pp. 12692-12698.

[3] *Id.* at 13232-13245.

Requested[4] filed by HLI to require the Register of Deeds to Furnish Certified True Copies of the Transfer Documents.

2. Motion for reconsideration of the Resolution[5] dated April 24, 2018 filed by Noel Mallari (Mallari) and Windsor Andaya (Andaya).

The Antecedents

On July 5, 2011, the Court rendered a Decision (Main Decision) upholding *PARC Resolution Nos. 2005-32-01* and *2006-34-01* which revoked HLI's stock distribution plan (SDP). Later on, in a Resolution[6] dated November 22, 2011 (2011 Resolution), the Court held as follows:

First, the shares of the FWBs in HLI acquired through the SDP/Stock Distribution Option Agreement (SDOA) shall be cancelled;

Second, HLI's agricultural land shall be placed under compulsory coverage. Consequently, the hacienda's remaining *4,335.24 hectares* shall be distributed to *qualified* FWBs;

Third, the FWBs shall retain all benefits already received, without obligation to refund or return them;

Fourth, the FWBs shall be entitled to 3% of the proceeds (₱1,330,511,500) from the sales/transfers to Centennary Holdings, Inc. (Centennary), Luisita Realty Corporation (LRC), and the Republic (land transfers) *after deducting taxes, transfer costs, and legitimate corporate expenses incurred by HLI/Centennary*. "For this purpose, DAR [was] ordered to engage the services of a reputable accounting firm approved by the parties to audit the books of HLI and Centennary Holdings,

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[4] *Rollo*, Vol. 14, pp. 13270-13281.

[5] *Hacienda Luisita, Inc. v. Luisita Industrial Park Corp., et al.*, 831 Phil. 14 (2018).

[6] *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.*, 676 Phil. 518 (2011).

Inc. to determine [the amount used for legitimate corporate purposes]";[7]

Fifth, HLI shall be entitled to just compensation for the agricultural land that will be transferred to the DAR. The taking thereof shall be reckoned from November 21, 1989.[8] For this purpose, the DAR and the Land Bank of the Philippines (Land Bank) shall determine the amount payable to HLI; and

Sixth, the DAR shall submit the following: (a) a compliance report six months after the finality of the judgment in the present case, and (b) reports on the progress of execution, every quarter until the judgment is fully implemented.

Thereafter, in a Resolution[9] dated April 24, 2012 (2012 Resolution) the Court, *by unanimous vote*: (a) maintained/reiterated its rulings on the *first* and *fourth* matters as above-discussed, and (b) amended the *fifth* matter by ordering the government, through the DAR, to pay just compensation to HLI for the homelots distributed to/retained by the FWBs. Finally, the Court declared the Main Decision, as modified/clarified by the 2011 and 2012 Resolutions, as *final and executory*.

Despite finality, the Court continued to hear succeeding incidents raised by the parties in the case, particularly those pertaining to the *fourth* and *fifth* matters in the Main Decision, *viz.*: *(1) the FWBs 3% share in the proceeds from the land transfers*; and *(2) HLI's entitlement to just compensation in exchange of the homelots given to the FWBs.*

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[7] *Id*. at 618.

[8] Date of issuance of Presidential Agrarian Reform Commission (PARC) Resolution No. 89-12-2, where the PARC previously approved Hacienda Luisita, Incorporated's (HLI) stock distribution plan. In determining the date of "taking," the Court voted 8-6 to maintain the ruling fixing November 21, 1989 as the date of "taking," the value of the affected lands to be determined by the Land Bank and the DAR. See *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.*, 686 Phil. 377, 417 (2012).

[9] *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.*, *id*.

The two matters led to (1) respondents Mallari and Andaya's *motion for reconsideration of the 2018 Resolution*; (2) and HLI's *Motion for the Payment of Just Compensation dated March 30, 2015* which are the main incidents presently awaiting the Court's resolution.

I

FWBs' 3% Share in the Proceeds from the Land Transfers

The matter of the FWBs' 3% share in the proceeds from the land transfers gave rise to the following incidents: (1) the selection of an external auditor, and (2) the determination of the amount of legitimate corporate expenses *vis-à-vis* net distributable balance.

Selecting an External Auditor

In the Main Decision, the Court ordered the DAR to engage the services of a reputable accounting firm approved by the parties to audit the books of HLI and Centennary.

After the parties failed to agree on selecting one audit firm, the Court directed them to submit their respective lists of ten preferred audit firms.

Based on the parties' recommendations,[10] the Court appointed (1) Ocampo, Mendoza, Leong and Lim (OMLL); (2) Ms. Carissa May Pay-Penson (Pay-Penson); and (3) Navarro Amper & Co. (NA&Co.) as members of the panel (Special Audit Panel) tasked to conduct the special audit as directed in the Main Decision.

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[10] HLI submitted the following names: (a) Reyes Tacandong & Co.; (b) Manabat San Agustin & Co. (KPMG); (c) Navarro Amper & Co. (Deloitte); (d) Isla Lipana & Co. (Pricewaterhouse Coopers); (e) Constantino Guadalquiver & Co. (Baker Tilly); (f) Villacruz, Villacruz & Co., CPAs; (g) Mendoza Querido & Co.; (h) Diaz Murillo Dalupan & Co.; (i) Alas Oplas & Co., CPAs; and (j) Valdes Abad & Associates. For their part, Galang and AMBALA recommended Ocampo, Leung and Lim (OMLL), Whereas, Mallari and Andaya nominated Carissa May Pay-Penson, CPA.

The panel of auditors, together with HLI representatives, met and discussed the mechanics and necessary details of such audit. Notably, however, OMLL did not participate in the meeting.

Subsequently, NA&Co. moved to clarify several matters[11] pertaining to the manner by which the panel shall perform the audit procedures. They also pointed out that OMLL, Rene Galang (Galang) and AMBALA's auditor of choice, have not yet attended any Special Audit Panel meeting or corresponded with any of the members. Thus, the panel sought the Court's confirmation on whether they could proceed with the audit despite OMLL's absence.

The Court directed the parties, including both OMLL and Pay-Penson, to comment on NA&Co.'s motion. OMLL did not comply.

To avoid further delays, the Court:[12] (1) revoked OMLL's appointment and selected anew Reyes Tacandong & Co. (RT&Co.) as the third member of the Special Audit Panel; (2) allowed the Special Audit Panel to determine the appropriate audit procedures, deferring to their expertise on the matter; (3) directed the Special Audit Panel to convene immediately and terminate the audit within 90 days after its first meeting; (4) designated NA&Co. as Special Audit Panel Chair and authorized the Special Audit Panel to (a) decide on the conduct of the audit and (b) resolve any other issue arising therefrom by a majority vote; and (5) mandated the Special Audit Panel to submit a monthly audit report and a final report within the 90-day period.

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[11] NA & Co., through counsel, sought to clarify the following matters: (1) How the audit by a Panel shall be conducted; (2) Whether the Panel was engaged by the Court or by the parties to the case; (3) The scope of the audit and the procedure to be followed by the Panel; (4) The contents and attachments of the audit report to be submitted by the Panel to the Court; and (5) The commencement of the 90-day period within which the Panel shall submit to the Court its report and recommendation.

[12] In a Resolution dated September 13, 2016, *rollo*, Vol. 14, pp. 13422-A-13422-G.

Respondents Mallari and Andaya sought to recall RT&Co.'s appointment and reinstate OMLL as a member of the panel.[13] The Court denied it with finality.[14]

On April 19, 2017, the Special Audit Panel convened and set out the scope of work,[15] agreed-upon procedures, manner by which each separate report shall be issued, and other matters.[16]

Determining the amount of legitimate corporate expenses vis-à-vis net distributable balance.

In the Main Decision, the Court held that the FWBs shall be entitled to 3% of the proceeds from the land transfers *after deducting taxes, transfer costs, and legitimate corporate expenses incurred by HLI/Centennary*. The *Net Distributable Balance* shall be computed by deducting the following items from the total proceeds from the land transfers:

1) 3% of the proceeds that were already paid to the FWBs;

2) tax expenses relating to the transfer of titles to the transferees; and

3) expenditures incurred by HLI for legitimate corporate expenses.

The audit panel's primary objective was to determine the amount of legitimate corporate expenses for purposes of computing the net distributable balance.[17] To aid the panel in

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[13] Motion for Reconsideration dated March 23, 2017, *id*. at 13543-13550.

[14] Resolution dated November 29, 2016, *id*. at 13471-13473.

[15] Including work program, process, workflow and client participation list.

[16] Including communication protocols, engagement timeline and reporting requirements.

[17] In a Resolution dated January 28, 2014 (2014 Resolution), the Court enunciated that the Special Audit Panel was tasked to determine if HLI actually used the proceeds from the land transfers (₱1,330,511,500) for legitimate corporate purposes. Any amount remaining after deducting these

their audit, the Court clarified[18] that the term "legitimate corporate expenses" shall be understood to mean "ordinary and necessary expenses" as used in taxation.

Results of audit.

By September 15, 2017, each panel member submitted a final report based on their respective findings, summarized as follows:

	RT&Co.	**NA&Co.**	**Pay-Penson**
Proceeds from sale of and	1,330,511,500	1,330,511,500	1,330,511,500
Deductions:			
3% Share of FWBs	39,915,345	39,709,309	34,740,462
Sale-related faxes	64,020,690	118,729,999	79,020,690
Legitimate corporate expenses	4,279,762,122	1,710,494,333	1,980,068,882
Subtotal	4,383,698,157	1,868,933,641	2,093,830,034
Excess of deductions over proceeds	**3,053,186,657**	**538,422,141**	**763,318,534**

Meanwhile, on December 13, 2017, respondents Mallari and Andaya filed a motion to execute the Main Decision.

In a Resolution[19] dated April 24, 2018 (2018 Resolution) based on the overall results of the audit, the Court ruled on respondents Mallari and Andaya's motion for execution as follows:

> To sum up, all three members of the audit panel have determined that the legitimate corporate expenses of HLI for the years 1998 up to 2011, coupled with the taxes and expenses related to the sale and the 3% share already distributed to the FWBs, far exceed the proceeds of the sale of the adverted 580.51-hectare lot. In net effect, there is no longer any unspent or unused balance of the sales proceeds available for distribution.

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expenses (Net Distributable Balance) shall be distributed to the 6,296 FWBs, *rollo*, Vol. 13, p. 12525.

[18] See 2014 Resolution, *id.* at 12522-12528.

[19] *Hacienda Luisita, Inc. v. Luisita Industrial Park Corp., et al.*, *supra* note 5.

WHEREFORE, premises considered, the July 5, 2011 Decision and November 22, 2011 Resolution of the Court insofar as it directed that "any unspent or unused balance and any disallowed expenditures as determined by the audit shall be distributed to the 6,296 original FWBs" are considered FULLY COMPLIED WITH.

SO ORDERED.[20]

Aggrieved, respondents Mallari and Andaya filed a *Motion for Reconsideration*[21] *of the 2018 Resolution.*

First Main Incident: Motion for Reconsideration of the 2018 Resolution.

In their *Motion for Reconsideration*[22] *of the 2018 Resolution*, respondents Mallari and Andaya insist that the Court erred in ruling that the amount of legitimate corporate expenses exceeded the total proceeds of the sale. The movants rely solely on Pay-Penson's report pointing out the following: (1) HLI did not fully pay the FWBs' 3% share in the proceeds. (2) ₱1,690,244,120[23] of the total HLI legitimate corporate expenses reported by Pay-Penson should be disallowed for "lack of proof of receipt by the intended recipients." The absence of such proof only means that the "funds did not leave the company" and thus cannot be considered as legitimate corporate expenses.

II

HLI's Entitlement to Just Compensation in Exchange of Homelots given to the FWBs

In the Main Decision, as reiterated in the 2012 Resolution, the Court decreed HLI's entitlement to just compensation in exchange for the homelots awarded to the FWBs.

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[20] *Id*. at 32-33.

[21] *Rollo*, Vol. 217.

[22] *Id*.

[23] Sum of disbursements amounting to: (a) ₱888,940,803 vouched to internal documents and traced to bank statements, and (b) ₱801,303,317 vouched to internal documents but not traced to bank statements.

These pronouncements prompted HLI to file the present Motion[24] dated March 30, 2015 requesting the Court to order the DAR and Land Bank to pay just compensation pursuant to the Main Decision and subsequent clarificatory issuances *(Motion for Just Compensation)*.

HLI's motion is the second of two main incidents currently pending before the Court. Significantly, this paved the way to additional clarificatory matters, as will be discussed below, collateral to the main motion.

Second Main Incident: Motion for Just Compensation.

The Court required[25] the DAR and Land Bank to file their respective comments to HLI's motion.

While not an original party to the proceedings,[26] Land Bank nonetheless filed its Comment[27] to HLI's Motion for Just Compensation to comply with the Court's directive. It pointed out that under DAR Administrative Order No. 2, Series of 2009,[28] the DAR shall first issue a Memorandum Request to Value Land addressed to Land Bank and forward the request together with the claim folders. However, it had not received any such request or claim folders from the DAR. Thus, it could not proceed to the subject homelots' valuation.[29]

For their part, the PARC/DAR manifested[30] that it cannot yet recommend the payment of any amount to HLI for the subject

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[24] *Rollo*, Vol. 13, pp. 12692-12698.

[25] See Resolution dated April 21, 2015, *id*. at 12709-A-12709-C.

[26] As recognized by the Court in the Resolution dated July 21, 2015 (*id*. at 12792-A-12792-D), acting on Land Bank's Manifestation and Motion dated June 17, 2015 (*id*. at 12773-12777).

[27] Comment dated October 6, 2015, *id*. at 12923-12927.

[28] Available *via* https://media.dar.gov.ph/source/2018/09/04/ao-2009-02.pdf, <last accessed: October 8, 2020>.

[29] As noted by the Court in the Resolution dated October 20, 2015, *rollo*, Vol. 13, pp. 12934-A-12934-C.

[30] In its Manifestation dated November 4, 2015, *id*. at 12976.

homelots because "they have no knowledge" on whether HLI has already received compensation.

Subsequently, the PARC/DAR sent a query[31] requesting HLI to clarify the "actual arrangements [they made] regarding the transfer of ownership of the homelots to the FWBs." In addition, it also requested for the certified true copies of the following: (a) "actual transfer documents signed between HLI and each of the [FWBs]," and (b) "other documents issued by HLI to the recipients of the homelots evidencing the award."[32]

Acting on the above filings by the PARC/DAR and Land Bank, the Court: (a) directed the DAR to forward the necessary request for valuation and accompanying claim folders to Land Bank;[33] and (b) required HLI to comment on the DAR's queries.[34]

On January 15, 2016, PARC/DAR filed another manifestation[35] detailing the procedures they have taken to fulfill their Court-mandated duties arising from the Main Decision, *viz.*: *first*, after evaluating HLI's submission, it noted that the list involved (a) 5,478 FWBs from different *barangays* across Tarlac and (b) 21 titles covering 197 hectares, with the actual homelots situated in 127 hectares thereof. *Second*, they have secured the certified electronic copies of 17 out of the 21 titles and conducted the necessary research on these titles. Only four remaining titles have not been so processed. *Third*, they have established that (a) HLI awarded 6,212 FWBs with *farm lots* and (b) only 1,754 of these FWBs were given *homelot* titles. *Fourth*, for those registered homelots, they have secured the necessary Subdivision Plans. On the other hand, they also secured the Approved Survey

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[31] In a Letter dated August 7, 2015 of Undersecretary Luis Pangulayan, as culled from the Manifestation and Motion dated January 14, 2016, *id*. at 13241.

[32] As culled from the Manifestation and Motion dated January 14, 2016, *rollo*, Vol. 13, p. 13241.

[33] See Resolution dated November 10, 2015, *id*. at 12948-12950.

[34] See Resolution dated November 16, 2015, *id*. at 12960-12962.

[35] *Id*. at 13232-13245.

Plans in relation to the untitled/unregistered portions. *Fifth*, after validating HLI's list of 5,478 FWBs as against the list of 6,212 actual *farm lot* awardees, the DAR Provincial Office of Tarlac noted that (a) the deeds of conveyance/assignment were annotated on the corresponding mother titles, (b) some *farm lot* titles issued in the name of FWBs were not so annotated, (c) there were discrepancies between the two lists as to the names of certain FWBs, and (d) some FWBs were awarded two or more *homelots*.

However, PARC/DAR expressed that it could not complete validation without (a) the certified true copies of documents signed by HLI and FWBs regarding the homelots and (b) prior to the clarification of certain matters regarding the homelots.

Sub-issues: (a) provision of certified true copies of transfer documents; and (b) queries on homelots per Resolution dated January 26, 2016.

In a Resolution[36] dated January 26, 2016, the Court: (a) granted the PARC/DAR's prayer and directed HLI to furnish the aforementioned certified true copies of actual transfer documents and other documents evidencing the award of homelots to FWBs, and (b) directed the parties concerned to comment on PARC/DAR's queries.

The Court restates the queries as follows:

Query #1 — Is HLI entitled to compensation for homelots given to 10,502 FWBs, considering that the lots were given freely to them pursuant to the SDOA, not by virtue of a legal obligation created by Section 30 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (CARL)?

Query #2 — Is HLI entitled to just compensation for the *agricultural land* that will be transferred to the DAR, considering that the subject *homelots* will not be transferred to the DAR

[36] *Id.* at 13248-13251.

pursuant to the Comprehensive Agrarian Reform Program, but because these have already been turned over to the FWBs, with no concomitant obligation to refund or return them?

Query #3 — May Land Bank utilize the Agrarian Reform Fund (ARP) to compensate HLI for the areas considered as *residential* or those homelots given to non-qualified FWBs?[37]

Query #4 — With regard to the FWBs who were only given certificates of award instead of certificates of title for their homelots: (a) what title should be issued in their favor, and (b) is the DAR mandated to issue Certificates of Land Ownership Award (CLOA) for the same?

HLI,[38] Land Bank,[39] and Galang[40] filed their respective comments on the above-enumerated queries.

Issues

Based on the parties' submissions, the issues presently before the Court are:

(1) Did the audit panel correctly determine that HLI's legitimate corporate expenses exceeded the total proceeds from the subject land transfers?

(2) Is HLI entitled to just compensation for the subject homelots?

(3) May the DAR use the ARF to pay just compensation due to HLI, if entitled?

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[37] 4,206 non-qualified FWBs did not receive awards for *agricultural land* but were awarded homelots.

[38] See Comment with Motion to Require Register of Deeds to Furnish Certified True Copies of Documents Requested dated February 29, 2016, *rollo*, Vol. 14, pp. 13270-13281.

[39] See Comment (Re: January 26, 2016 Supreme Court Resolution) dated March 17, 2016, *id*. at 13310-13317.

[40] See Comment on Queries Regarding Homelots dated April 30, 2016, *id*. at 13350-13374.

(4) What title should be issued in favor of the FWBs who were only given certificates of award instead of certificates of title for their homelots? Is the DAR mandated to issue CLOAs for the same?

(5) Are the certified true copies of the documents evidencing the transfer of homelots necessary for the completion of DAR's validation procedures?

The Ruling of the Court

The Court shall resolve the pending incidents according to the issues above-enumerated.

Audit results on legitimate corporate expenses.

Respondents Mallari and Andaya's arguments are not substantial to warrant a reconsideration of the 2018 Resolution.

A closer look at their motion reveals that they are essentially questioning the Special Audit Panel's audit methodology, including its appreciation of documents in audit (*e.g.*, persuasiveness of documents *vis-à-vis* proving the existence of the expenses).

Still, the Court finds no reason to rule contrary to the Special Audit Panel's findings. Each member of the Special Audit Panel arrived at the results after performing agreed-upon procedures[41] which are in accordance with auditing standards generally accepted in engagements/services such as those required in the present case.[42]

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[41] The panel members agreed to "the procedures agreed upon independently and shall therefore issue a separate report based on the procedures performed." See Resolution dated April 24, 2018.

[42] Footnote 4, *Hacienda Luisita, Inc. v. Luisita Industrial Park Corp., et al.*, *supra* note 5 at 22 states: "Per NA&Co., the engagement was undertaken to the extent possible and subject to the limitations, in accordance with the requirements of Philippine Standard on Related Services (PSRS) 4400, Engagements to Perform Agreed-Upon Procedures." PSRS are issued by the Audit and Assurance Standards Council (AASC). The AASC was

The results were resounding. All three Special Audit Panel members found that the legitimate corporate expenses exceeded the proceeds from transfers, leaving nothing more to distribute to the FWBs. That these were supported by "internal" documents, as respondents Mallari and Andaya claim, do not diminish the documents' persuasiveness, probative value, and reliability in audit. Their attempt to discredit the audit results cannot overturn the Special Audit Panel's unanimous findings. Certainly, the movants Mallari and Andaya cannot substitute the Special Audit Panel's wisdom with their own, inasmuch as these auditors are recognized experts in their field.[43]

HLI's entitlement to just compensation for homelots.

At this juncture, the Court underscores its unanimous and unequivocal pronouncement in the Main Decision as clarified in the 2012 Resolution:

> The Court, by a unanimous vote, resolved to maintain its ruling that the FWBs shall retain ownership of the homelots given to them with no obligation to pay for the value of said lots. However, since the SDP was already revoked with finality, **the Court directs the government through the DAR to pay HLI the just compensation for said homelots in consonance with Sec. 4, Article XIII of the 1987 Constitution that the taking of land for use in the agrarian reform program is "subject to the payment of just compensation." Just compensation should be paid to HLI instead of Tadeco in view of the Deed of Assignment and Conveyance dated March 22, 1989 executed between Tadeco and HLI, where Tadeco transferred**

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constituted pursuant to RA 9298 the Accountancy Action of 2004, primarily to aid the Board of Accountancy in relation to its power to promulgate "auditing standards, rules and regulations and best practices as may be deemed proper for the enhancement and maintenance of high professional, ethical, accounting and auditing standards." See *Preface to Philippine Standards on Quality Control, Auditing, Review, Other Assurance and Related Services* (Available at https://aasc.org.ph/downloads/aasc/publications/PDFs/Preface_to_Philippine_Standards.pdf, <last accessed on October 13, 2020>.

[43] To recall, in the Resolution dated September 13, 2016, in view of their expertise in the matter, the Court deferred to the panel the determination of "[t]he scope of the audit and the procedure to be followed x x x."

and conveyed to HLI the titles over the lots in question. DAR is ordered to compute the just compensation of the homelots in accordance with existing laws, rules and regulations.[44] (Emphasis supplied.)

Clearly, the issue on HLI's entitlement to just compensation has been squarely settled. More importantly, the Court's ruling on this matter has already become final and executory. Thus, the parties are now barred by "estoppel and the [principle of] finality of judgments from raising arguments aimed at modifying [the Court's] final rulings."[45] The Court cannot allow the parties to prolong these proceedings by filing motion after motion, only to perpetually deflect/delay [a legal] obligation.[46]

Propriety of using the ARF to pay just compensation for the homelots.

In *Land Bank of the Phils. v. Suntay*,[47] the Court had the occasion to explain the ARF's origin and purpose, *viz.*:

> Subsequently, Republic Act No. 9700 amended the CARL in order to strengthen and extend the CARP. It is notable that Section 21 of Republic Act No. 9700 expressly provided that "all just compensation payments to landowners, including execution of judgments therefore, shall only be sourced from the Agrarian Reform Fund"; and that "just compensation payments that cannot be covered within the approved annual budget of the program shall be chargeable against the debt service program of the national government, or any unprogrammed item in the General Appropriations Act."
>
> The enactments of the Legislature decreed that the money to be paid to the landowner as just compensation for the taking of his land is to be taken only from the ARF. x x x[48]

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[44] *Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, et al.*, *supra* note 8 at 429.

[45] *NPC Drivers and Mechanics Assn. (NPC DAMA), et al. v. The National Power Corporation (NPC), et al.*, 821 Phil. 62, 71 (2017).

[46] *Id*.

[47] 678 Phil. 879 (2011).

[48] *Id*. at 918-919.

Stated differently, when it is adjudged that a landowner is entitled to just compensation pursuant to agrarian reform principles, payment to him shall be derived from the ARF. Having already settled that HLI is entitled to just compensation for the subject homelots, there should no longer be any doubt that the ARF shall be utilized to pay HLI for this purpose.

Issuance of titles to homelot recipients.

From a careful review of the parties' submissions, it appears that HLI distributed homelots to a number of FWBs and issued certificates of award to evidence the transfers. Thereafter, the homelot recipients were required to proceed to the Register of Deeds to register their ownership in a Torrens certificate of title.[49] However, presently, while some recipients already have certificates of title registered in their names, others continue to hold unregistered Certificates of Award.[50] According to HLI, some recipients failed to submit the complete documents required for registration. As a result, they were unable to register their title and obtain certificates therefor.[51]

The DAR presently seeks to clarify the manner by which the remaining Certificates of Award should be registered and whether it is mandated to issue CLOAs in favor of the homelot recipients who have yet to register their titles.

In this regard, the Court refers to the case of *Department of Agrarian Reform v. Carriedo*,[52] wherein the Court recognized that a CLOA issued by the DAR is a "document evidencing

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[49] See Reply to Comment of Respondent Rene Galang on the Queries in the 26 January 2016 Resolution dated August 27, 2019 filed by Hacienda Luisita, Incorporated, *rollo*, Vol. 218.

[50] As culled from the Manifestation and Motion dated January 14, 2016, *rollo*, Vol. 13, p. 13243.

[51] See Reply to Comment of Respondent Rene Galang on the Queries in the 26 January 2016 Resolution dated August 27, 2019 filed by Hacienda Luisita, Incorporated, *rollo*, Vol. 218.

[52] G.R. No. 176549, October 10, 2018.

ownership of the land granted or awarded to the beneficiary x x x and contains the restrictions and conditions provided for in the CARL and other applicable laws." Thus, it possesses the same indefeasible status as that of a Torrens certificate of title.

In other words, the issuance of one or the other in favor of a homelot recipients should not result in a disparity in the rights of their respective holders, inasmuch as they are, for all intents and purposes, equivalents of each other.

However, for purposes of uniformity, the recipients' title over the homelots must be registered and evidenced by the same type of document of title—a Torrens title. Registration of title in the Torrens system shall be the responsibility of the individual homelot recipients.

Completion of DAR's validation procedures.

In compliance with the Court's directive to implement the Main Decision and subsequent resolutions, the DAR began the process of validating the list of homelot awardees.[53] Based on its research, it ascertained, among others, the total homelot area and the number of FWBs awarded with homelot titles. However, the PARC/DAR avers that the certified true copies of the transfer documents evidencing the award of homelots to the individual recipients are necessary to complete validation procedures. In the Resolution dated January 26, 2016, the Court granted their request and directed HLI to furnish the DAR with the aforementioned documents.

However, HLI claims that they do not have the original copies of these transfer documents which have either been submitted to the Register of Deeds, or given to the FWBs. Thus, HLI countered with a motion to direct the Register of Deeds to produce the requested documents, "being the entity which x x x has x x x custody and possession of the same."[54]

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[53] *Rollo*, Vol. 13, p. 13240.

[54] *Rollo*, Vol. 14, p. 13272.

Significantly, the completion of the DAR's validation procedures is a pre-condition to the payment of just compensation. Thus, it is in HLI's best interest to fully cooperate with the DAR which includes providing the necessary documents to the best of their ability. It is difficult to believe that HLI no longer possesses the originals/certified true copies of these documents. Certainly, as the transferor in the disposition of homelots, it must have retained copies of the documents evidencing those transfers.

At the same time, the Court recognizes that the DAR's request involves voluminous records, portions of which may have already become unavailable, or difficult to locate due to the passage of time. To produce and furnish these documents will prove to be a costly and burdensome task if imposed on a single party/entity.

Thus, the Court implores the concerned parties – PARC/DAR, HLI, and the Register of Deeds – to form a committee/task force and agree on their respective responsibilities for purposes of collating the records requested.

In fine, the Court's rulings are as follows: *first*, inasmuch as the legitimate corporate expenses exceed the proceeds from the subject land transfers, HLI's obligation to pay the FWBs' 3% share in the proceeds from the land transfers or the net distributable balance is *fully complied with*. *Second*, HLI is entitled to just compensation for the subject homelots. For its part, Land Bank shall effect payment thereof from the ARF. *Third*, the DAR shall proceed with its validation procedures. HLI, PARC/DAR, and the Register of Deeds shall come together and collate the documents needed to enable the DAR to complete its procedures.

At this point, the Court no longer sees any further need to clarify other matters. Any effort to once again seek the Court's intervention on matters already settled and clarified will be viewed as mere attempts to delay the execution/implementation of the present case.

The Court has spoken. The issues are laid to rest.

WHEREFORE, the Court resolves to:

1. **GRANT** the Motion for the Payment of Just Compensation dated March 30, 2015 filed by petitioner Hacienda Luisita, Incorporated.

2. **DIRECT** respondent Department of Agrarian Reform to proceed with its validation procedures.

3. **PARTIALLY GRANT** the Motion to Require the Register of Deeds to Furnish Certified True Copies of Documents Requested filed by petitioner Hacienda Luisita, Incorporated and **DIRECT** Hacienda Luisita, Incorporated, the Presidential Agrarian Reform Council, Department of Agrarian Reform, and the Register of Deeds to form a committee/task force for purposes of completing and collating the documentation required to validate the homelot awards.

4. **ORDER** the Department of Agrarian Reform to determine just compensation upon completion of its validation procedures.

5. **ORDER** the Land Bank of the Philippines to release the payment of just compensation for the homelots according to DAR's determination thereof.

6. **DENY WITH FINALITY** the Motion for Reconsideration of the Resolution dated April 24, 2018 filed by respondents Noel Mallari and Windsor Andaya.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 202542. December 9, 2020]

ANGONO MEDICS HOSPITAL, INC., *Petitioner, v.* **ANTONINA Q. AGABIN,** *Respondent.*

APPEARANCES OF COUNSEL

Rodrigo L. Yuson for petitioner.
Marino M. Abes for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the April 27, 2012 Decision[2] and June 27, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. S.P. No. 114001.

The CA reversed and set aside the December 16, 2009[4] and February 26, 2010[5] Resolutions of the National Labor Relations Commission (NLRC) in NLRC Case No. LAC No. 02-000595-09 which declared that the computation for the award of separation pay and backwages in favor of respondent, Antonina Q. Agabin (Agabin), should be limited in view of a rejected previous offer of reinstatement.

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[1] *Rollo*, pp. 9-20.

[2] Id. at 22-30; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Fernanda Lampas Peralta and Mario V. Lopez (now a Member of this Court).

[3] Id. at 32-33.

[4] CA *rollo*, pp. 16-25; penned by Commissioner Pablo C. Espiritu and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III.

[5] Id. at 27-28.

The Antecedents:

Agabin was hired by Angono Medics Hospital, Inc. (AMHI) on September 1, 2002 as a staff midwife with a monthly salary of ₱3,500.00. While working, she was allowed by Andres Villamayor (Villamayor), the former President of AMHI, and Antoinette E. Antiojo (Antiojo), the Chief Nurse, to study nursing simultaneously.

On June 23, 2007, Agabin requested permission to go on leave without pay from June 29, 2007 to September 15, 2007 as she needed to work as an affiliate in Mariveles, Bataan as part of her school requirement. Antiojo approved the request on the same day.

On September 15, 2007, Agabin returned to AMHI to inform Antiojo that she was ready to report back to work. Consequently, Agabin was included in the Schedule of Duty for the period September 16 to 30, 2007 with a 10:00 P.M. to 6:00 A.M. shift and off-duty days on September 23 and 30, 2007.

However, on September 19, 2007, Villamayor berated Agabin for coming in to work and told her to go home and take a vacation. Agabin explained to Villamayor that Antiojo approved her leave of absence but Villamayor ignored her explanation and retorted that she should go home since she had been away from work for a long time. Villamayor also told Agabin that she would not be compensated for her work rendered on September 17 and 18, 2007.

The next day, Antiojo informed Agabin that as per Villamayor's instructions, Agabin should not report for work anymore. Thus, Agabin filed a Complaint[6] for illegal dismissal, separation pay, backwages and other monetary claims.

AMHI denied dismissing Agabin. It claimed that the latter simply failed to report for work after June 28, 2007 for unspecified reasons.

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[6] Id. at 37.

Ruling of the Executive Labor Arbiter (Arbiter):

In a December 19, 2008 Decision,[7] the Arbiter found that Agabin was illegally dismissed from her job. Moreover, Agabin's leave of absence was with the prior approval of Antiojo as supported by an approved leave form. Agabin also reported for work after September 15, 2007 and was included in the Schedule of Duty from September 16 to 30, 2007. The Arbiter found Agabin's assertion that Villamayor ordered her not to report for work anymore to be credible, especially in light of the sudden separation from employment of Antiojo from AMHI, whose cooperation AMHI could have utilized to rebut Agabin's claims. The Arbiter also found Agabin's filing of the illegal dismissal complaint within a reasonable period inconsistent with AMHI's claim of abandonment.[8]

Likewise, AMHI did not accord due process to Agabin. However, since Agabin opted for separation pay due to her strained relations with AMHI, the Arbiter awarded full backwages and separation pay, in lieu of reinstatement, in addition to service incentive leave pay, 13th month pay, and wages for work performed on September 17 and 18, 2007, and attorney's fees. Villamayor was held jointly and severally liable with AMHI in accordance with Article 212 (e)[9] of the Labor Code and considering that his acts which were tainted with bad faith.[10]

The dispositive portion of the Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding that complainant [Agabin] was illegally dismissed, and ordering

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[7] Id. at 30-36; penned by Executive Labor Arbiter Generoso V. Santos.

[8] Id.

[9] ART. 219 [212]. *Definitions*. x x x

x x x x x x x x x

(e) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

[10] CA *rollo*, pp. 34-35.

respondents to jointly and severally pay complainant [Agabin] the following:

a. Backwages from September 19, 2007 until the finality of the Decision in her favor, tentatively computed until December 19, 2008 in the amount of P97,890.00;

b. 13th month pay of P8,157.50;

c. Separation pay at one month pay for every year [of] service to be computed from September 2, 2002 until the finality of the Decision in her favor, tentatively computed until December 19, 2008 in the amount of P39,156.00;

d. Service Incentive Leave Pay for three (3) years in the amount of P3,745.00;

e. Salary from September 17 & 18, 2008 of P502.00;

f. Thirteenth (13th) month pay for 2007 in the amount of P3,745.00;

g. Attorney's fee at ten (10%) percent of the total award in the amount of P15,416.00.

SO ORDERED.[11]

Aggrieved, AMHI appealed[12] before the NLRC.

Ruling of the National Labor Relations Commission:

In its December 16, 2009 Resolution,[13] the NLRC affirmed the ruling of the Arbiter. The labor tribunal held that Agabin was illegally dismissed as AMHI did not observe substantial and procedural due process.[14]

However, considering Agabin's refusal to AMHI's offer for reinstatement during the January 16, 2008 hearing, the computation of her separation pay and backwages should be

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[11] Id. at 35-36.

[12] Id. at 86-93.

[13] CA *rollo*, pp. 16-21.

[14] Id. at 22-23.

modified in that it should be limited for the period September 19, 2007 until January 16, 2008 while her separation pay should be computed from September 1, 2002 up to January 16, 2008.[15] Thus, the NLRC modified the Executive Labor Arbiter's Decision, *viz.*:

> WHEREFORE, premises considered, the appeal is partly GRANTED and the Decision dated 19 December 2008 is MODIFIED by limiting the period of the award of separation pay from 01 September 2002 until 16 January 2008 and the backwages from 19 September 2007 until 16 January 2008. Accordingly, complainant-appellee [Agabin] is entitled to P**33,800.00** separation pay and P**29,070.10** backwages.
>
> The other parts of the Decision [STAND].
>
> SO ORDERED.[16]

AMHI[17] and Agabin[18] both asked for a reconsideration but the NLRC denied their motions in its February 26, 2010 Resolution.[19] Dismayed, AMHI filed a Petition for *Certiorari*[20] before the CA which was docketed as CA-G.R. S.P. No. 113939 (SP No. 113939) and entitled "*Angono Medics Hospital, Inc. v. NLRC and Antonina Q. Agabin*." Agabin also filed a Petition for *Certiorari*[21] which was docketed as CA-G.R. S.P. No. 114001 (SP No. 114001) and entitled "*Antonina Q. Agabin v. NLRC and Angono Medics Hospital, Inc.*" Unfortunately, both petitions were not consolidated by the appellate court.

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[15] Id. at 23.

[16] Id.

[17] Id. at 95-102.

[18] Id. at 104-107.

[19] Id. at 27-28.

[20] Id. at 3-14.

[21] Not appended in the records but mentioned by Agabin in her Comment dated June 10, 2010 to AMHI's petition for *certiorari* in CA-G.R. SP No. 113939.

Ruling of the Court of Appeals:

The CA dismissed AMHI's Petition (SP No. 113939) in its July 19, 2010 Decision[22] and held that the NLRC's factual findings and conclusions are supported by substantial evidence. It did not give credence to AMHI's claim that Agabin was guilty of abandoning her job.[23] It also ruled that as a consequence of her illegal dismissal, Agabin is entitled to full backwages and separation pay, in lieu of reinstatement, and attorney's fees.[24]

Undeterred, AMHI filed a Motion for Reconsideration[25] but it was denied by the CA in its November 4, 2010 Resolution.[26]

AMHI's Petition for Review on *Certiorari*[27] docketed as G.R. No. 194465 was denied by this Court in its February 9, 2011 Resolution;[28] AMHI's motion for reconsideration thereof was likewise denied with finality in a June 13, 2011 Resolution.[29] An Entry of Judgment[30] was subsequently issued.

Meanwhile, in SP No. 114001, the appellate court reinstated the Arbiter's December 19, 2008 Decision in its assailed April

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[22] *Rollo*, pp. 35-53; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias.

[23] Id. at 43-44.

[24] Id. at 50.
The dispositive portion of the appellate court's July 19, 2010 Decision in CA-G.R. SP No. 113939 reads:
WHEREFORE, premises considered, the Petition is DENIED.
SO ORDERED.

[25] CA *rollo*, pp. 149-152.

[26] *Rollo*, pp. 55-56; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias.

[27] CA *rollo*, pp. 174-188.

[28] *Rollo*, p. 57.

[29] Id. at 58.

[30] Id. at 59.

27, 2012 Decision.[31] The appellate court found that AMHI's offer of reinstatement was not supported by evidence and thus should not have been automatically factored in by the NLRC as a basis for modifying the reckoning point of the award of separation pay and backwages.

It clarified that even if the alleged offer was made, the award of separation pay and backwages should be computed from the time Agabin's compensation was withheld from her until the time of her actual reinstatement, and not only up to the time the offer of reinstatement was made, in accordance with Article 279[32] of the Labor Code. A mere order for reinstatement issued by the Arbiter is different from the actual restoration of an employee to his or her previous position. Hence, in case of reinstatement, the backwages and other monetary awards shall continue beyond the issuance of the Arbiter's ruling until such time the said reinstatement is actually complied.[33]

Moreover, in cases where reinstatement is no longer feasible, separation pay and backwages must be computed up to the finality of the decision. In addition, until actual receipt by the employee of the award of separation pay, the employer-employee relationship subsists and entitles the illegally dismissed employee to an award of backwages, 13th month pay, and other benefits from the time of his or her actual dismissal until finality of the decision of the Labor Arbiter.[34] Thus, the dispositive portion of the CA's assailed April 27, 2012 Decision provides:

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[31] Id. at 22-30.

[32] Art. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[33] *Rollo*, pp. 27-28.

[34] Id. at 28-29.

WHEREFORE, the petition is **GRANTED**. The December 16, 2009 and February 26, 2010 *Resolutions* of the NLRC in NLRC Case No. RAB IV-11-25748-07-RI 00-01-00499-06 (LAC No. 02-000595-09) are **REVERSED** and **SET ASIDE**. Accordingly, the December 19, 2008 Decision of the Labor Arbiter in NLRC Case No. RAB-IV-11-25748-07-RI is hereby ordered **REINSTATED**.

SO ORDERED.[35]

AMHI's motion for reconsideration was denied by the appellate court in its June 27, 2012 Resolution.[36] Discontented, AMHI elevated[37] this case (SP No. 114001) before Us via a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court and raised this sole error:

THE COURT OF APPEALS ERRED IN NOT RULING THAT [ITS] JULY 19, 2010 DECISION IN CA-G.R. SP NO. 113939, WHICH AFFIRMED IN FULL THE RESOLUTIONS DATED DECEMBER 16, 2009 AND FEBRUARY 26, 2010 OF THE NATIONAL LABOR RELATIONS COMMISSION IN NLRC LAC NO. 02-000595-09 ENTITLED "ANTONINA Q. AGABIN VS. ANGONO MEDICS HOSPITAL" WHICH PARTLY GRANTED THE APPEAL OF PETITIONER FROM THE EARLIER DECISION DATED DECEMBER 19, 2008 OF THE LABOR ARBITER IN NLRC CASE NO. RAB-IV-11-25748-07-RI, CONSTITUTES AS A BAR TO ANY SUBSEQUENT CONTRARY DECISION IN CA-G.R. SP NO. 114001.[38]

The pivotal issue in this case is whether or not the ruling of the CA in SP No. 113939 (G.R. No. 194465) controls and prevails over another CA ruling in SP No. 114001. Stated differently, the issue is whether or not the ruling in SP No. 113939 (G.R. No. 194465) serves as *res judicata* upon SP No. 114001, the case at bench. After resolving this matter, the next question is how the monetary awards of Agabin should actually be computed.

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[35] Id. at 29.

[36] Id. at 32-33.

[37] Id. at 9-18.

[38] Id. at 14.

The Petition:

AMHI mainly argues that the decision in SP No. 113939 (G.R. No. 194465), which is already final and executory, has the effect of *res judicata* upon SP No. 114001. It opines that the decision in SP No. 114001 should be considered null and void since there is identity of parties, subject matter, and causes of action between the two cases contemplated herein.[39]

Agabin counters that the legal issues raised by the parties in the separate Petitions for *Certiorari* before the CA are entirely different from each other. She clarifies that the question in SP No. 114001 (G.R. No. 202542, the case at bench) before the CA is the computation of her monetary awards.

Agabin also argues that SP No. 114001 should not be considered as subsequent case to SP No. 113939 for the purpose of the application of *res judicata* because both SP No. 113939 and SP No. 114001 stemmed from the same issuances, *i.e.*, the NLRC's December 16, 2009 and February 26, 2010 Resolutions. The mere fact that SP No. 113939 was filed a week earlier and decided ahead of SP No. 11400l should not prejudice her as she just exercised her statutory right to file a *certiorari* petition to assail the Resolutions of the NLRC which limited her award of backwages.[40]

Agabin further contends that the CA rulings in SP No. 113939 and SP No. 114001 are consistent with each other because in both cases, the CA held that AMHI illegally dismissed her and awarded her separation pay, backwages, and other benefits.[41]

Our Ruling

The petition is unmeritorious.

SP No. 113939, AMHI's Petition for *Certiorari* before the CA, raised the issue of the Arbiter's alleged abuse of discretion

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[39] Id. at 14-15.

[40] Id. at 68.

[41] Id. at 69.

"in not granting the motion for examination and in not setting the case for formal hearing before deciding the case on its merits, and the [NLRC's abuse of] discretion in affirming a clearly illegal act of said arbiter."[42] SP No. 114011 or Agabin's Petition for *Certiorari* before the CA, on the other hand, she raised the following issues:

WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT MODIFIED THE DECISION OF THE LABOR ARBITER DATED DECEMBER 19, 2008 BY LIMITING THE AWARD OF BACKWAGES TO PETITIONER ONLY FROM SEPTEMBER 19, 2007 UNTIL JANUARY 16, 2008 INSTEAD OF FROM SEPTEMBER 19, 2007 UNTIL THE FINALITY OF THE DECISION.

WHETHER OR NOT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DENIED THE MOTION FOR RECONSIDERATION OF ITS RESOLUTION DATED DECEMBER 16, 2009.[43]

Preliminarily, We agree with the finding that Agabin was illegally dismissed and that the same has already become final and executory. This is clear from the ruling in SP No. 113939 (G.R. No. 194465) and even in SP No. 114001 or the case at bench. It should be stressed that what is being assailed in the case at bench (G.R. No. 202542) is the computation of Agabin's separation pay and backwages and no longer the finding of illegal dismissal. Indeed,

> As a rule, 'a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. Any attempt on the part of the . . . entities charged with the execution of a final judgment to insert, change or add matters not clearly *contemplated* in the dispositive portion violates the rule on immutability of judgments.' An exception to this rule is the existence of supervening event which refer to facts transpiring after judgment has become final and executory or to new circumstances

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

[43] *Rollo*, p. 27.

that developed after the judgment acquired finality, including matters that the parties were not aware of prior to or during the trial as they were not yet in existence at that time."[44]

In this case, no supervening event transpired which could alter the finding of illegal dismissal.

The question now is whether the finality of SP No. 113939 (G.R. No. 194465) would affect the computation of respondent's backwages and separation pay. AMHI contends that the doctrine of *res judicata* should apply and Agabin can no longer question the limitation in the computation of her monetary awards.

Res judicata means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.' It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[45]

The concept of *res judicata* can be found in Section 47, Rule 39 of the Rules of Court, *viz.*:

SEC. 47. *Effect of judgments or final orders. —*

The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x x x x x x

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

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[44] *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 97 (2013).

[45] *Monterona v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 209116, January 14, 2019 citing *Spouses Selga v. Brar*, 673 Phil. 581, 591 (2011).

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Monterona v. Coca-Cola Bottlers Philippines, Inc.[46] exhaustively explains the two rules of *res judicata* which are:

x x x (1) bar by prior judgment as enunciated in Rule 39, Section 47 (b); and (2) conclusiveness of judgment in Rule 39, Section 47 (c) *Oropeza Marketing Corporation v. Allied Banking Corporation*[47] differentiated between the two rules of *res judicata*:

There is 'bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or any other tribunal.

But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to the matters merely involved therein. This is the concept of *res judicata* known as 'conclusiveness of judgment.' Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered

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[46] Id.

[47] Id., citing *Oropeza Marketing Corporation v. Allied Banking Corporation*, 441 Phil. 551, 564 (2002).

by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. x x x Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a 'bar by prior judgment' would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as 'conclusiveness of judgment' applies.[48]

The instant case should be resolved on the basis of the rule on "conclusiveness of judgment" since although there is identity of parties in both SP Nos. 113939 and 114001, the causes of action are not identical, as earlier discussed. Moreover, strictly speaking, there is only conclusiveness of judgment insofar as the finding of illegal dismissal is concerned and not as to the computation of the monetary awards.

In view of these considerations, the Court finds that there is no conflict between the two CA rulings. In SP No. 113939, the appellate court dealt with the illegal dismissal aspect of the case as well as the Arbiter's denial of AMHI's motion to further examine Agabin's documents and to set the case for formal hearing.

On the other hand, in SP No. 114001, the CA delved on the correct basis and computation of Agabin's backwages and separation pay. Relevantly, the appellate court in SP No. 113939 did not discuss at all the computation of the monetary awards; it merely quoted the rulings of both the Arbiter and the NLRC.

To reiterate, in SP No. 113939, while the appellate court affirmed both the rulings of the Arbiter and the NLRC as regards the issue of Agabin's illegal dismissal, it did not delve into the computation of separation pay and backwages. In this regard, it cannot be said that there was a bar by conclusiveness of judgment by virtue of the finality of SP No. 113939 which would in turn bar Agabin from further contesting the computation of her monetary awards. As it stands, the said computation can

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[48] Id.

still be questioned since the CA in SP No. 113939 did not expressly make a definitive finding that the NLRC's ruling in limiting the award prevailed over the Arbiter's Decision to grant full backwages and separation pay to Agabin.

At this point, We reiterate that the issue of Agabin's illegal dismissal has already been settled as confirmed by both SP No. 113939 (G.R. No. 194465), which already became final and executory, and by SP No. 114001. Hence, there is no need to belabor this issue.

We now resolve the issue on the computation of Agabin's backwages and separation pay.

It is settled that "[t]he twin reliefs that should be given to an illegally dismissed employee are full backwages and reinstatement.[49] Backwages restore the lost income of an employee and is computed from the time compensation was withheld up to actual reinstatement.[50] Anent reinstatement, only when it is not viable is separation pay given."[51] As earlier ruled, Agabin is entitled to the said reliefs. In *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*,[52] We held that a decision in a case involving illegal dismissal consists essentially of two components:

> The *first* is that part of the decision that cannot now be disputed because it has been confirmed with finality. This is the finding of the illegality of the dismissal and the awards of separation pay in lieu of reinstatement, backwages x x x.
>
> The *second* part is the computation of the awards made. x x x[53]

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[49] *Peak Ventures Corp. v. Heirs of Villareal*, 747 Phil. 320-337 (2014) citing *St. Luke's Medical Center, Inc. v. Notario*, 648 Phil. 285 (2010).

[50] Id.

[51] Id., citing *Capili v. National Labor Relations Commission*, 337 Phil. 210, 216 (1997), *Buhain v. Court of Appeals*, 433 Phil. 94, 102-103 (2002), and *St. Luke's Medical Center, Inc. v. Notario*, supra.

[52] 624 Phil. 612 (2010).

[53] Id. at 625.

Since the first part, specifically the finding of illegal dismissal, is no longer disputed in the instant case, the second part or the computation of monetary awards should be determined. The case of *Bani Rural Bank, Inc. v. De Guzman*[54] extensively explained the basis for the computation of the monetary awards, as follows:

> The computation of backwages depends on the final awards adjudged as a consequence of illegal dismissal, in that:
>
> *First*, when reinstatement is ordered, the general concept under Article 279 of the Labor Code, as amended, computes the backwages from the time of dismissal until the employee's reinstatement. The computation of backwages (and similar benefits considered part of the backwages) can even continue beyond the decision of the labor arbiter or NLRC and ends only when the employee is actually reinstated.[55]
>
> *Second*, when separation pay is ordered in lieu of reinstatement (in the event that this aspect of the case is disputed) or reinstatement is waived by the employee (in the event that the payment of separation pay, in lieu, is not disputed), backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay**.
>
> *Third*, when separation pay is ordered after the finality of the decision ordering the reinstatement by reason of a supervening event that makes the award of reinstatement no longer possible (as in the case), backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay**.
>
> The above computation of backwages, when separation pay is ordered, has been the Court's consistent ruling. In *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, we explained that the finality of the decision becomes the reckoning point because in allowing separation pay, the **final** decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.

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[54] *Supra*, note 44.

[55] Id. citing *Javellana, Jr. v. Belen*, 628 Phil. 241 (2010).

We may also view the proper computation of backwages (whether based on reinstatement or an order of separation pay) in terms of the life of the employment relationship itself.

When reinstatement is ordered, the employment relationship continues. Once the illegally dismissed employee is reinstated, any compensation and benefits thereafter received stem from the employee's continued employment. In this instance, backwages are computed only up until the reinstatement of the employee since after the reinstatement, the employee begins to receive compensation from his resumed employment.

When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay since the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment.[56]

The second scenario squarely applies in the case at bar since the order of separation pay was decreed in lieu of reinstatement. Hence, the employer-employee relationship of AMHI and Agabin will only be completely terminated upon the finality of the decision which ordered the payment of separation pay and backwages.

It follows that the computation of Agabin's backwages must be from the time of her illegal dismissal from employment on September 19, 2007 until the finality of the decision ordering the payment thereof. As for her separation pay, it should be computed at one month pay for every year of service reckoned from September 2, 2002 (as found by the Arbiter) until the finality of the decision in her favor. The ruling of the CA in its assailed April 27, 2012 Decision and June 27, 2012 Resolution

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[56] Id. at 101-103.

which reinstated the December 19, 2008 Decision of the Arbiter is thus correct.

Lastly, the backwages including allowances and benefits or their monetary equivalent which were granted in favor of Agabin shall, in accordance with Our ruling in *Nacar v. Gallery Frames*,[57] earn legal interest of twelve (12%) percent per *annum* from the time these were withheld until June 30, 2013, and thereafter, six percent (6%) per *annum* from July 1, 2013 until finality of this judgment. Additionally, all monetary awards shall earn an interest at the rate of six percent (6%) per *annum* from the date of the finality of this Decision until fully paid.[58]

WHEREFORE, the instant petition is **DENIED**. The April 27, 2012 Decision and June 27, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 114001 holding that respondent Antonina Q. Agabin was illegally dismissed and thus entitled to full backwages, separation pay, and other monetary awards from the time of her illegal dismissal until finality of the decision in her favor, are **AFFIRMED**. The December 19, 2008 Decision of the Executive Labor Arbiter is **REINSTATED**.

Petitioner is **ORDERED** to pay respondent Antonina Q. Agabin the following:

a. **FULL BACKWAGES**, inclusive of allowances, and other benefits or their monetary equivalent from the time these were withheld from her on September 19, 2007 until finality of this judgment; and

b. **SEPARATION PAY IN LIEU OF REINSTATEMENT** at one month salary for every year of service, with a fraction of at least six (6) months considered as one whole year computed from the date of the start of her employment on September 2, 2002 until finality of judgment.

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[57] 716 Phil. 267, 280-283 (2013). *See* Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.

[58] Id.

The total monetary award shall earn legal interest at the rate of twelve percent (12%) per *annum* from the time her salary and other benefits were withheld until June 30, 2013; and at the rate of six percent (6%) per *annum* from July 1, 2013 until the date of finality of this judgment. All the said monetary awards shall be subject to legal interest of six percent (6%) per *annum* from the date of finality of this judgment until full satisfaction of the same.

The case is **REMANDED** to the arbitration branch of origin for the computation of separation pay and backwages, other allowances and benefits or their monetary equivalent, and for the execution of the award.

SO ORDERED.

Leonen (*Chairperson*), *Gesmundo,*[*] *Delos Santos,* and *Rosario, JJ.,* concur.

[*] Designated as additional Member per raffle dated November 23, 2020 vice *J.* Inting who recused due to his sister's (then Associate Justice of the Court of Appeals Socorro B. Inting) prior participation in the Court of Appeals.

FIRST DIVISION

[G.R. Nos. 205528-29. December 9, 2020]

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION (PHILPHOS), *Petitioner*, *v.* **ALEJANDRO O. MAYOL, MANUEL A. TABUCANON, JOELITO J. BELTRAN, ALEJO P. PORRAS, AGAPITO M. PASANA, PETER T. SUELTO, SERGIO D. MERINO, DANILO S. SALEM, EMELYN B. CORTON, EUGENIO G. CASTRO, HERMINIGILDO[*] P. NAVALES, LORNA B. RAMIREZ, LIMUEL C. ROCHE, FORTUNATO HINGARAY, OLIMPIO B. LIMOSNERO, RAMISES C. LAURIO, OSCAR P. RODADO, DOMINADOR C. MULLET, PACIFICO C. TOMAKIN, BALTAZAR A. NABONG, ALFONSO M. CABALDA, MILA A. QUIMZON, NARCISO G. GUCELA, ROJARD T. ABUEVA, RAUL F. DELA CRUZ, MANUEL ERWIN P. PETILOS, DANILO S. RANALAN, ENRILE T. RIAZA, LUIS L. BARRERA, JIMMY C. ESMA, EDWIN T. RETIZA, ISIDRO TABANAO, GREGORIO AGUANTA, ALVIN HANAPOL, and VICENTE A. ABALOS, SR.,** *Respondents*.

[G.R. Nos. 205797-98. December 9, 2020]

ALEJANDRO O. MAYOL, MANUEL A. TABUCANON, JOELITO J. BELTRAN, ALEJO P. PORRAS, AGAPITO M. PASANA, PETER T. SUELTO, SERGIO D. MERINO, DANILO S. SALEM, EMELYN B. CORTON, EUGENIO G. CASTRO, HERMINIGILDO P. NAVALES, LORNA B. RAMIREZ, LIMUEL C. ROCHE, FORTUNATO HINGARAY, OLIMPIO B. LIMOSNERO, RAMISES C. LAURIO, OSCAR P. RODADO, DOMINADOR C. MULLET, PACIFICO C. TOMAKIN, BALTAZAR A. NABONG, ALFONSO M. CABALDA, MILA A. QUIMZON, NARCISO G.

[*] Spelled as Herminio in some part of the *rollo*.

GUCELA, ROJARD T. ABUEVA, RAUL F. DELA CRUZ, MANUEL ERWIN P. PETILOS, DANILO S. RANALAN, ENRILE T. RIAZA, LUIS L. BARRERA, JIMMY C. ESMA, EDWIN T. RETIZA, ISIDRO TABANAO, GREGORIO AGUANTA, ALVIN HANAPOL, and VICENTE A. ABALOS, SR., *Petitioners*, *v.* **PHILIPPINE PHOSPHATE FERTILIZER CORPORATION (PHILPHOS),** *Respondent*.

APPEARANCES OF COUNSEL

Azura Quiroz & Campos Law Offices for Phil. Phosphate Fertilizer Corp.

Agustin B. Alo for Alejandro Mayol, *et al.*

D E C I S I O N

GAERLAN, *J.*:

Employment is not only a source of income, but for others, a means of survival. As such, saving a business from financial woes should not be achieved at the expense of the employees' livelihood. Reducing the workforce through retrenchment should be availed of only in cases of a clear downward spiral and after other means to stave off losses have proved futile.

This resolves the consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the January 17, 2011 Decision[2] and the January 17, 2013 Resolution[3] of the Court of Appeals (CA) in the consolidated cases of CA-G.R. SP No. 04267 and CA-G.R. SP No. 04499.

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[1] *Rollo* (G.R. Nos. 205528-29), pp. 8-47; Id. (G.R. Nos. 205797-98) at 3-11.

[2] Id. at 51-63; penned by Associate Justice Edwin D. Sorongon, with Associate Justices Portia A. Hormachuelos and Socorro B. Inting, concurring.

[3] Id. at 65-79; penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Carmelita Salandanan Manahan, concurring.

Antecedents

The following facts are common to the petitions:

Philippine Phosphate Fertilizer Corporation (Philphos) is a domestic company engaged in the business of manufacturing, selling and importing fertilizer products. Philphos hired the following rank-and-file employees on various dates and for the following positions:[4]

NAME	DATE EMPLOYED	POSITION
Alejandro O. Mayol	February 23, 1984	Shiploader Operator
Manuel A. Tabucanon	March 1, 1984	Boardman
Joelito J. Beltran	August 16, 1990	Fieldman
Alejo P. Porras	August 27, 1984	Mobile Equipment Operator
Agapito M. Pasana	May 14, 1990	Fieldman
Peter T. Suelto	December 16, 1983	Journeyman
Sergio D. Merino	August 11, 1984	Mechanic
Danilo S. Salem	December 16, 1983	Mechanic
Emelyn B. Corton	December 16, 1983	Inventory Control
Eugenio G. Castro	December 12, 1983	Heavy Equipment Operator
Herminigildo P. Navales	November 17, 1984	Driver
Lorna Ramirez	March 9, 1984	Encoder/Clerk
Limuel Roche	April 1, 2003	Fieldman
Fortunato Hingaray	September 12, 1984	Journeyman
Olimpio B. Limosnero	August 27, 1984	Utilities Boardman
Ramises G. Laurio	August 23, 1984	Heavy Equipment Operator
Oscar P. Rodado	February 6, 1990	Fieldman
Dominador C. Mullet	February 4, 1984	Crane Operator
Pacifico C. Tomakin	December 28, 1984	Mobile Equipment Operator
Baltazar A. Nabong	August 1, 1984[5]	Fieldman
Alfonso M. Cabalda	February 20, 1985	Mechanical Journeyman
Mila A. Quimzon	May 25, 1984	Record Encoder
Narciso G. Gucela	March 1, 1984	Mechanic
Rojard T. Abuevas	November 23, 1992	Fieldman

[4] Id. at 81-83; 154; 246-248.

[5] Stated in their Complaint as June 1, 1984.

Raul F. Dela Cruz	July 20, 2002	Fieldman
Manuel Erwin P. Petilos	July 16, 2000	E & I
Danilo S. Ranalan	October 24, 2002	Fieldman
Enrile T. Riaza	May 16, 2002	Maintenance
Luis Barrera	February 23, 1984	Boardman
Jimmy C. Esma	December 16, 1983	Journeyman
Isidro Tabanao	September 3, 1990	Fieldman
Edwin Retiza	August 17, 1992	Farm Technician
Alvin Hanapol	May 16, 1990	Loading Checker
Gregorio Aguanta	March 1, 1984	Journeyman
Vicente A. Abalos, Sr.	October 3, 1984	Journeyman

On January 18, 2007, Dennis Mate, Executive Vice President of Philphos, sent various notices to 84 employees informing them of the management's decision to streamline the organization to avert the losses sustained in 2006.[6] The employees were informed that all benefits accruing to them will be paid upon the accomplishment of their employment clearance.[7]

Thereafter, on January 24, 2007, Razoland B. Roullo, AVP Human Resources of Philphos, submitted to the Department of Labor and Employment (DOLE) Regional Office the list of employees affected by the retrenchment program.[8] Subsequently, Philphos submitted another report adding three more names.[9]

Meanwhile, the Union of Philphos' rank-and-file employees filed a Notice of Strike. Thus, on February 5, 2007, a forum was held between Philphos, the Union and the employees.[10] Representatives from the DOLE, National Conciliation and

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[6] *Rollo* (G.R. Nos. 205528-29), p. 581.

[7] Id.

[8] Id. at 582.

[9] Id.

[10] Id.

Mediation Board, and National Labor Relations Commission (NLRC) attended the forum.[11]

On April 19, 2007, 27 retrenched employees signed a Receipt and Release, and accordingly received their separation pay from Philphos.[12] However, Alejandro Mayol (Mayol) and Joelito Beltran (Beltran) did not receive their separation pay due to their refusal to process their employment clearance.[13]

On July 10, 2007, the first group of employees led by Mayol (Mayol Group) filed a complaint for unfair labor practice, illegal dismissal, payment of separation pay differentials, retirement benefits, with moral and exemplary damages, and attorney's fees.[14]

Rulings of the Labor Tribunals

On May 28, 2008, Executive Labor Arbiter Jesselito B. Latoja (LA Latoja) dismissed the complaint filed by the Mayol group. LA Latoja declared that Philphos' retrenchment program was valid. He noted that Philphos sufficiently established that it sustained a loss of ₱1.9 billion. It submitted its balance sheets as of December 3, 2006 and 2005, statement of income, statement of charges in stockholder's equity and statement of cash flows. The audit was undertaken by an independent external auditor.[15] Likewise, Philphos informed the workers of the retrenchment,[16] and paid them separation pay equivalent to 100 percent of their monthly salary.[17]

LA Latoja disposed of the case as follows:

WHEREFORE, the instant Complaint is hereby DISMISSED for lack of merit.

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[11] Id.

[12] Id.

[13] Id.

[14] Id. at 14.

[15] Id. at 584.

[16] Id. at 583.

[17] Id.

Complainants Alejandro Mayol and Joelito Beltran can collect their separation pay from [Philphos] upon completion of their employment clearances.

SO ORDERED.[18]

Aggrieved, the Mayol Group filed an appeal against the LA Decision.

On September 30, 2008, the NLRC dismissed the appeal.[19] It affirmed the LA's ruling that Philphos' retrenchment program was validly implemented to prevent further losses.[20]

Furthermore, the NLRC observed that out of 87 workers who were retrenched, 29 filed a complaint for illegal dismissal. Thereafter, 27 of the complainants eventually accepted Philphos' offer of separation pay equivalent to one month pay for every year of service,[21] and voluntarily executed a Receipt and Release. The remaining two complainants, Mayol and Beltran refused to accept their separation pay. Moreover, it was only Mayol who filed an appeal against the LA ruling. He did not submit a Special Power of Attorney (SPA) proving his authority to sign on behalf of the other employees. Thus, the Decision has attained finality as against the others.[22]

The dispositive portion of the NLRC ruling states:

WHEREFORE, the appeal is DISMISSED and the questioned decision is AFFIRMED.

SO ORDERED.[23]

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[18] Id. at 584.

[19] Id. at 585-587; penned by Presiding Commissioner Violeta Ortiz-Bantug, with Commissioners Oscar S. Uy, Aurelio D. Menzon, concurring.

[20] Id. at 587.

[21] Id. at 586.

[22] Id.

[23] Id. at 587.

Dissatisfied with the ruling, the Mayol Group filed a Motion for Reconsideration, which was denied in the January 23, 2009 NLRC Resolution.[24]

Meanwhile, a second group[25] consisting of eight Philphos employees (Retiza Group) filed a Complaint[26] for illegal dismissal, with claim for 200% separation pay for every year of service, 200% early retirement pay, and reinstatement with full backwages.[27]

However, the second complaint suffered the same fate, and was dismissed by LA Latoja in a Decision[28] dated September 22, 2008. LA Latoja reiterated that Philphos' retrenchment program was valid as it was based on substantial evidence that the latter suffered serious and actual business losses. LA Latoja further stated that Philphos complied with the requirements of notice and payment of separation pay.[29]

In addition, LA Latoja denied the Retiza Group's claim for 200% separation pay and 200% retirement pay. He explained that the grant of such benefits never ripened into a company practice.

The dispositive portion of the Decision reads:

> WHEREFORE, this case is hereby DISMISSED for lack of merit.
>
> SO ORDERED.[30]

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[24] Id. at 142-143.

[25] Edwin T. Retiza, Fortunato Hingaray, Isidro Tabanao, Gregorio Aguanta, Jimmy Esma, Luis Barrera, Alvin Hanapol and Vicente Abalos.

Luis Barrera and Jimmy Esma were listed as complainants in the Mayol Complaint.

[26] *Rollo* (G.R. Nos. 205528-29), pp. 153-154.

[27] Id. at 549.

[28] Id. at 178-184.

[29] Id. at 549.

[30] Id. at 184.

The Retiza Group filed an appeal.

On January 26, 2009, the NLRC dismissed the appeal.[31] The NLRC noted that the facts of the second complaint stem from the same circumstances in the Mayol Group's case. Hence, it refused to depart from its previous ruling and applied the same precedent.[32] It affirmed that the retrenchment was valid and effected to avert the financial losses sustained by Philphos.[33] Thus, it disposed of the appeal as follows:

> WHEREFORE, the instant appeal is DISMISSED and the challenged decision is AFFIRMED.
>
> Complainants Isidro Tabanao, Jimmy Esma and Luis Barrera are hereby impose [sic] the penalty of FINE OF FIVE THOUSAND PESOS each for forum-shopping. Their counsel on records, Atty. Agustin Alo who is also the same counsel for the first group, is likewise FINED in the amount of TEN THOUSAND PESOS.
>
> SO ORDERED.[34]

The Retiza Group filed a Motion for Reconsideration, which was denied in the May 29, 2009 NLRC Resolution.[35]

Thereafter, the Mayol and Retiza groups filed separate petitions for *certiorari* before the CA. The CA ordered the consolidation of the cases.[36]

Ruling of the CA

On January 17, 2011, the CA rendered a Decision[37] granting the petitions for *certiorari*. The CA held that Philphos failed to prove serious business losses.[38] It presented no other evidence,

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[31] Id. at 209-212.

[32] Id. at 210.

[33] Id. at 211.

[34] Id.

[35] Id. at 213-214.

[36] Id. at 52.

[37] Id. at 51-63.

[38] Id. at 58.

save for the 2006 Audited Financial Statement.[39] The CA opined that it is not enough to present the financial statement for the year the retrenchment was undertaken.[40] Rather, it must be shown that the losses increased over a period of time and that the condition will not likely to improve in the near future.

Accordingly, the CA declared that the employees were illegally dismissed. Thus, it awarded backwages computed from the time of their illegal dismissal up to the finality of its judgment.[41] However, the CA opined that reinstatement is no longer possible in view of the situation of the parties. Hence, it ordered the payment of separation pay in lieu of reinstatement.[42] Moreover, the CA noted that all the employees have received their separation pay except for Mayol and Beltran.

Lastly, the CA denied the employees' claim for 200% separation pay, considering that such benefit was not customarily granted by Philphos.[43]

The decretal portion of the CA ruling states:

WHEREFORE, the instant petition is PARTIALLY GRANTED. The impugned decision of the National Labor Relations Commission dated September 30, 2008 as well as the decision of the Labor Arbiter dated May 28, 2008 is REVERSED and SET ASIDE. Accordingly, Alejandro Mayol and Joelito Beltran are directed to collect their separation pay after completing their employment clearances on top of the backwages duly awarded to them. In the meantime, this case is hereby remanded to the Labor Arbiter for the proper computation of the backwages.

SO ORDERED.[44]

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[39] Id.

[40] Id.

[41] Id. at 62.

[42] Id.

[43] Id. at 61.

[44] Id. at 62.

Both parties sought reconsideration of the CA ruling. Philphos filed a Motion for Clarification of Judgment dated February 15, 2011, and a Motion for Reconsideration dated February 26, 2011.[45] It sought clarification on whether the award of backwages applies to all employees or only to Mayol and Beltran. It further maintained that it implemented a valid retrenchment program.

Meanwhile, the employees filed a Motion for Reconsideration dated February 9, 2011, insisting that they are entitled to 200% early retirement pay, and 200% separation pay.[46] They further claimed that the award of backwages must be subjected to an interest of 6% *per annum*.[47] Likewise, Mayol and Beltran prayed for their reinstatement.[48]

On January 17, 2013, the CA issued a Resolution[49] resolving the Motions as follows:

First, it granted Philphos' motion for clarification of judgment, and explained that the award of backwages applies to all employees.[50] Additionally, the CA held that the employees who received their separation pay are not barred from questioning the legality of their dismissal.[51]

Second, the CA denied Philphos' motion for reconsideration.[52] The CA reiterated that Philphos failed to prove that its losses were substantial, that they increased over a period of time, and that its condition will not likely improve in the near future.[53]

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[45] Id. at 66.

[46] Id. at 67.

[47] Id.

[48] Id.

[49] Id. at 65-79.

[50] Id. at 71.

[51] Id. at 75.

[52] Id. at 70.

[53] Id. at 74.

Third, the CA denied the employees' claim for 200% early retirement pay and separation pay, considering that said awards have not ripened into customary company practice.[54]

Fourth, the CA denied Mayol's and Beltran's prayer for reinstatement on the ground of strained relations between the parties.[55] It noted that Mayol and Beltran did not receive their separation pay due to their refusal to process their clearances.[56]

Finally, the CA imposed legal interest of 12% *per annum* on the award of backwages, as a forbearance of money.[57]

The decretal portion of the CA Resolution reads:

CONFORMABLY TO THE FOREGOING, We resolve the following:

1. Philphos' Motion to Clarify Judgment is GRANTED and the Court hereby declares that ALL petitioners in this petition are entitled to backwages;

2. Philphos' Motion for Reconsideration is hereby DENIED; and

3. Petitioners' Motion for Reconsideration is PARTIALLY GRANTED, to wit:

   a. Petitioners' prayer for the reinstatement of petitioners Mayol and Beltran is DENIED;

   b. Their prayer for the grant of 200% separation pay is DENIED; and

   c. Their prayer for the imposition of interest on backwages is GRANTED, where interest at the rate of 12% per annum may be imposed upon petitioners' backwages from the time this Court's decision dated January 17, 2011 becomes final and executory until the satisfaction of the award provide therein.

SO ORDERED.[58]

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[54] Id. at 76.

[55] Id. at 77.

[56] Id. at 76.

[57] Id.

[58] Id. at 78.

Dissatisfied with the CA's ruling, Philphos and the employees respectively filed petitions for review on *certiorari* before the Court.

On July 1, 2013, the Court issued a Resolution[59] ordering the consolidation of the petitions.

Issues

The issues raised in the consolidated petitions are inter-related and consist of procedural and substantive grounds, which may be summarized as follows:

(i) Whether or not the employees' petition should be dismissed for failure to comply with Section 4, Rule 45 of the Rules of Court;

(ii) Whether or not the appeal before the NLRC of the employees who failed to sign the Verification/Certification of Non-Forum Shopping may be given due course;

(iii) Whether or not the January 17, 2011 Decision of the CA reversed and set aside the September 22, 2008 LA Decision and January 26, 2009 NLRC Decision;

(iv) Whether or not Philphos' retrenchment program is valid;

(v) Whether or not Mayol and Beltran are entitled to reinstatement;

(vi) Whether or not the employees who executed the Receipt and Release are barred from recovering their backwages; and

(vii) Whether or not the employees are entitled to the following awards: (a) 200% separation pay; (b) 200% early retirement pay; (c) moral damages; (d) exemplary damages; and (e) attorney's fees.

Philphos claims that the employees' petition should be dismissed outright due to their failure to comply with Section 4,

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[59] Id. at 502-A.

Rule 45 of the Rules of Court.[60] Allegedly, the petition did not state the material dates, was not accompanied by a clearly legible duplicate original or certified true copy of the final order and material documents to support the petition, and did not contain a sworn certification against forum shopping signed by all the employees.[61]

Moreover, Philphos points out that only Mayol appealed the May 28, 2008 LA Decision.[62] He was the only one who signed the Verification/Certification of Non-Forum Shopping in the Appeal Memorandum.[63] Hence, said Decision is already final insofar as the other employees are concerned. They may no longer be parties to the petition for *certiorari* before the CA.[64]

Additionally, Philphos contends that the dispositive portion of the CA's January 17, 2011 Decision only reversed the May 28, 2008 LA Decision and the September 30, 2008 NLRC Decision (Mayol Group cases). It did not reverse and set aside the September 22, 2008 LA Decision and the January 26, 2009 NLRC Decision (Retiza Group cases).[65]

As for the merits of the case, Philphos maintains that it complied with the requirements for a valid retrenchment.[66] It incurred a substantial net loss of around P1.9 billion in 2006, which is duly supported by audited financial statements.[67] This net loss is not simply *de minimis*, but is substantial, serious, actual and real.[68] Hence, it implemented its retrenchment program in January 2007 to avert further losses. In fact, after the

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[60] Id. at 579.

[61] Id.

[62] Id. at 39.

[63] Id.

[64] Id.

[65] Id. at 40.

[66] Id. at 33.

[67] Id. at 19.

[68] Id. at 20.

retrenchment, it saved P38 million, which represented the salaries and benefits of the 85 retrenched employees.[69] Likewise, it gave the employees separation pay equivalent to their one-month salary for every year of service, and furnished the DOLE with the required notices.[70]

Furthermore, Philphos contends that the employees who signed the Receipt and Release are barred from claiming benefits.[71] It also argues that Mayol and Beltran are not entitled to reinstatement, considering that the retrenchment program is valid.[72]

Finally, Philphos avers that the employees are not entitled to 200% early retirement pay and to 200% separation pay.[73] Said benefits were not provided under the Collective Bargaining Agreement (CBA) and were not given customarily.[74]

On the other hand, the employees counter that Philphos' retrenchment program is illegal. Moreover, they argue that the Receipt and Release is akin to a quitclaim and is contrary to public policy.[75] They contend that they were pressured and tricked by Philphos into signing the Release, under the pretense that the retrenchment was legal.[76] They needed the money because they had just lost their jobs.[77]

Additionally, the employees aver that since they were illegally dismissed, they are entitled to backwages and benefits. Also, Mayol and Beltran ask for their reinstatement to their former positions. They claim that the CA's ruling barring reinstatement

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[69] Id.

[70] Id. at 33.

[71] Id. at 40.

[72] Id. at 555.

[73] Id. at 576.

[74] Id.

[75] Id. at 495.

[76] Id.

[77] Id.

due to strained relations is misplaced, as it applies only to managerial employees or those who hold positions of trust and confidence.[78] Moreover, they posit that the degree of hostility in a litigation is not sufficient proof of the existence of strained relations.[79]

Furthermore, the employees insist that Philphos has a standing policy of giving 200% separation pay to its retrenched workers. Likewise, the CBA grants 200% early retirement pay for the laid-off employees who have served for 23 years.[80]

Lastly, the employees clamor for an award of indemnity and exemplary damages in view of Philphos' false accusations of a supposed valid cause for retrenchment.[81]

Ruling of the Court

This case brings to fore another struggle between capital and labor. At odds are the right of the employer to prevent financial loss by reducing its workforce *vis-a-vis* the struggle of the employees to protect their very livelihood.

In resolving the impasse, the Court recognizes the importance of granting businesses/employers freedom and autonomy to carry out their operations. However, this prerogative is by no means unbridled. The right to save business operations shall not be achieved by trampling upon the employees' tenurial security.

Guided by these precepts, the Court shall resolve the case, starting with the procedural issues raised by Philphos.

The employees substantially complied with Section 4, Rule 45 of the Rules of Court and the rules on non-forum shopping.

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[78] Id. (G.R. Nos. 205797-78) at 6.

[79] Id. at 7.

[80] Id. at 5.

[81] Id. at 10.

Philphos urges for the outright dismissal of the employees' petition due to the following infirmities, namely: (i) absence of a statement of material dates, (ii) failure to submit the certified true copies of the judgment or final order and the material portions of the record that would support the petition and (iii) lack of a sworn certification against forum shopping signed by all the employees.[82]

In a long line of cases, the Court excused the parties' failure to comply with Section 4, Rule 45. It declared that the ends of justice will be better served if cases are decided on the merits, after granting the parties a full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections. The rules of procedure are designed to expedite the resolution of cases. As such, a strict and rigid application of the same, which results in technicalities that frustrate rather than promote substantial justice, must be avoided.[83]

In fact, in *Metropolitan Bank and Trust Company v. Absolute Management Corporation*, and *Superlines Transportation Company, Inc. v. Philippine National Construction Company and Pedro Balubal*, the Court excused therein petitioners' failure to attach the important documents to their petition, and held that such "omission is not a grievous one that the spirit of liberality cannot address."[84] What matters is that the Court had a clear narration of the facts and arguments according to both parties' views.[85]

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[82] Id. (G.R. Nos. 205528-29) at 579.

[83] *Nicolas v. Del-Nacia*, 575 Phil. 498, 507 (2008), citing *Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation, et al.*, 451 Phil. 647, 661 (2003); *Metropolitan Bank & Trust Co. v. Absolute Mgm't. Corp.*, 701 Phil. 200, 209-210 (2013), citing *F.A.T. Kee Computer Systems, Inc. v. Online Networks International, Inc.*, 656 Phil. 403, 420-421 (2011).

[84] *Metropolitan Bank & Trust Co. v. Absolute Mgm't. Corp.*, id. at 210-211.

[85] Id.

The Court shall grant the employees the same modicum of liberality.

A scrutiny of the records shows that the employees substantially complied with Section 4, Rule 45. The petition indicates the date when they received the assailed CA Resolution.[86] This suffices to determine whether their petition for review was filed on time. Likewise, they attached the assailed CA Decision and Resolution in their petition. Their failure to append the other material documents may be excused considering that the Court was able to peruse and scrutinize said documents from the records of the consolidated cases. The records were replete with the rulings of the labor tribunals, the parties' complaint, position papers, petitions, and other important documents that aided in the resolution of the case. Essentially, the Court had the benefit of a clear narration of the facts and arguments of the case according to both parties' perspectives.

Moreover, the employees submitted a Compliance[87] dated January 2, 2014, wherein they attached a Verified Statement[88] declaring that they received the January 17, 2011 CA Decision on January 31, 2011.[89] Furthermore, they attached a SPA[90] executed on January 11, 2008, which proves Mayol's authority to sign the Verification/Certification of Non-Forum Shopping on behalf of the other employees. The SPA states that the employees authorize Mayol to represent them in the proceedings before the NLRC, the CA and the Court.[91]

It is thus clear from the foregoing that the employees substantially complied with Section 4, Rule 45. Besides, the

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[86] *Rollo* (G.R. Nos. 205797-98), p. 4.

[87] Id. at 68-69.

[88] Id. at 70-71.

[89] Id. at 70.

[90] Id. at 72-73.

[91] Id. at 72.

gravity of the issues in the instant case, which involves the livelihood of the employees, certainly warrants a resolution on the merits.

The January 17, 2011 CA Decision reversed all the assailed LA and NLRC Decisions.

The Court rejects Philphos' argument that the CA Decision dated January 17, 2011, merely reversed the May 28, 2008 LA ruling and September 30, 2008 NLRC decision involving the Mayol Group. Notably, the CA ordered the consolidation of the petitions of the Mayol Group and the Retiza Group. Accordingly, the decision rendered by the CA applied to both sets of employees. Likewise, the facts and circumstances in both petitions are intricately entwined. The issues pertaining to the validity of retrenchment, the illegality of the employees' dismissal, and the benefits due them are inter-related. Clearly, the intent of the CA was to apply its disposition to both consolidated petitions.

Having thus disposed of the procedural issues, the Court shall now resolve the merits of the case.

Philphos' retrenchment program is illegal.

The Labor Code recognizes the right of the employer to terminate employment to prevent serious business losses:

Art. 298 [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.

Parenthetically, retrenchment is the termination of employment initiated by the employer through no fault of, and without prejudice to the employees. It is a management prerogative resorted to avoid or minimize business losses during periods of recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, or conversion of the plant.[92]

It bears stressing that the employer's prerogative to retrench employees should not be used as a weapon to frustrate labor.[93] Lest it be forgotten, employment to the common man is his very life and blood, and must thus be protected against concocted causes to legitimize an otherwise irregular termination of employment.[94] Accordingly, to avert devious schemes aimed at frustrating the employees' tenurial security, compliance with the following requisites is imperative:

x x x (1) the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employee/s concerned and the DOLE at least one month before the intended date of retrenchment; (3) the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) the employer exercises its prerogative to retrench in good faith; and (5) the employer

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[92] *Lambert Pawnbrokers and Jewelry Corp., et al. v. Binamira*, 639 Phil. 1, 11 (2010), citing *Anabe v. Asia Construction (ASIAKONSTRUKT), et al.*, 623 Phil. 857, 862 (2009).

[93] *Andrada v. National Labor Relations Commission*, 565 Phil. 821, 827 (2007).

[94] *F.F. Marine Corporation v. The 2nd Division, NLRC*, 495 Phil. 140, 151-152 (2005).

uses fair and reasonable criteria in ascertaining who would be retrenched or retained.[95]

Admittedly, Philphos paid the retrenched employees their separation pay equivalent to their one-month salary, and furnished DOLE with the required notices one month prior to the retrenchment. Unfortunately, however, Philphos failed to comply with the other requisites of retrenchment.

Philphos failed to prove that it incurred substantial business losses over a period of time and that its chances of recovery are bleak.

Essentially, the first requirement to implement a valid retrenchment program is to present proof that it is reasonably necessary, and is likely to prevent business losses which are substantial, serious, real, and not merely *de minimis* in extent. If the losses purportedly sought to be forestalled by retrenchment are proven to be insubstantial and inconsequential, the *bonafide* nature of the retrenchment would be in doubt.[96]

Over time, jurisprudence has expanded the concept of "substantial business losses." In *Lambert Pawnbrokers and Jewelry Corp., et al. v. Binamira*, it was stressed that a mere decline in a company's gross income does not constitute a substantial business loss that would warrant retrenchment:

> At any rate, we perused over the financial statements submitted by petitioners and we find no evidence at all that the company was suffering from business losses. In fact, in their Position Paper, petitioners merely alleged a sharp drop in its income in 1998 from ₱1 million to only ₱665,000.00. This is not the business losses contemplated by the Labor Code that would justify a valid retrenchment. A mere decline in gross income cannot in any manner

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[95] *Lambert Pawnbrokers and Jewelry Corp., et al. v. Binamira*, supra note 92 at 11-12, citing *Anabe v. Asia Construction (ASIAKONSTRUKT), et al.*, supra note 92 at 862-863.

[96] *F.F. Marine Corporation v. The 2nd Division, NLRC*, supra note 94 at 152-153.

be considered as serious business losses. It should be substantial, sustained and real.[97]

Similarly, in *Phil. Carpet Employees Asso. (PHILCEA) v. Hon. Sto. Tomas*, it was clarified that "sliding incomes" or "decreasing gross revenues" are not losses under the purview of the law. Rather, the employer must prove the he/she sustained losses over a period of time, and that the prospect of financial improvement is bleak. In the cited case, the Court noted that although the losses may have been occurring over a period of time, the data however showed that the sales of the company increased.[98]

> What the law speaks of is serious business losses or financial reverses. Sliding incomes or decreasing gross revenues are not necessarily losses, much less serious business losses within the meaning of the law. The bare fact that an employer may have sustained a net loss, such loss, per se, absent any other evidence on its impact on the business, nor on expected losses that would have been incurred had operations been continued, may not amount to serious business losses mentioned in the law. The employer must also show that its losses increased through a period of time and that the condition of the company will not likely improve in the near future.[99] (Citations omitted)

Moreover, in *Emco Plywood Corporation v. Abelgas*,[100] it was declared that the employer must prove that the losses are continuing, and devoid of an immediate prospect of abating. Without this, "the nature of the retrenchment is seriously disputable":

> In the present case, petitioners have presented only EMCO's audited financial statements for the years 1991 and 1992. As already stated, these show that their net income of ₱1,052,817.00 for 1991 decreased

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[97] *Lambert Pawnbrokers and Jewelry Corp., et al. v. Binamira*, *supra* note 92 at 12.

[98] *Phil. Carpet Employees Asso. (PHILCEA) v. Hon. Sto. Tomas*, 518 Phil. 299, 316 (2006).

[99] Id.

[100] 471 Phil. 460 (2004).

to ₱880,407.85 in 1992. *Somerville Stainless Steel Corporation v. NLRC* held that the presentation of the company's financial statements for a particular year was inadequate to overcome the stringent requirement of the law. According to the Court, "[t]he failure of petitioner to show its income or loss for the immediately preceding years or to prove that it expected no abatement of such losses in the coming years bespeaks the weakness of its cause. The financial statement for 1992, by itself, x x x does not show whether its losses increased or decreased. Although [the employer] posted a loss for 1992, it is also possible that such loss was considerably less than those previously incurred, thereby indicating the company's improving condition.[101]

As correctly ruled by the CA, Philphos' documents fail to prove that it suffered from substantial losses over a period of time, and that the prospect of abating said losses is dismal. Philphos merely showed its financial statement in the year preceding the retrenchment. There was no proof showing that it was suffering from a downward spiral.

The Court further notes that the Independent Auditor's Report[102] was issued on April 30, 2007, while the retrenchment program was implemented in as early as January 18, 2007. In *Lambert Pawnbrokers and Jewelry Corp., et al. v. Binamira*, the Court observed that the financial statements were prepared after the date of the retrenchment, which thus rendered the employer's claim of substantial loss, dubious.

Philphos failed to prove that its retrenchment program was a measure of last resort and an effective means to avert losses.

To afford full protection to labor, the employer's prerogative to bring down labor costs through retrenchment must be exercised carefully and as a measure of last resort.[103] Even though a

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[101] *Id.* at 478.

[102] *Rollo* (G.R. Nos. 205528-29), pp. 239-245.

[103] *Andrada v. National Labor Relations Commission*, supra note 93; *F.F. Marine Corporation v. The 2nd Division, NLRC*, supra note 94 at 158.

company may have sustained losses, still, retrenchment is not justified absent any showing that it was adopted as a measure of last recourse.[104] Equally important, the employer must prove that the retrenchment is reasonably necessary to avert losses.[105] Notably, "[n]ot every loss incurred or expected to be incurred by employers can justify retrenchment.[106]

The Court's warning in *F.F. Marine Corporation v. The 2nd Division NLRC*, is very clear:

> x x x There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, *i.e.*, cut other costs than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, ***the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means*** — *e.g.*, reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc. — have been tried and found wanting.[107]

In the instant case, Philphos failed to show that it implemented other cost-cutting measures to resurrect itself from financial doom. In addition, it did not prove that its retrenchment program was reasonably necessary to avert serious financial loss. It claims

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[104] *F.F. Marine Corporation v. The 2nd Division, NLRC*, id., *Emco Plywood Corporation v. Abelgas*, supra note 100.

[105] *Emco Plywood Corporation v. Abelgas*, id., citing *Guerrero v. NLRC*, 329 Phil. 1069, 1076 (1996).

[106] Id.

[107] *F.F. Marine Corporation v. The 2nd Division, NLRC*, supra note 94 at 152-153.

that after implementing its retrenchment program, it was able to save ₱38,469,260.60,[108] which represented the retrenched employees' salaries and benefits. At first glance, it appears as if Philphos saved a substantial sum of money by downsizing its workforce. However, it must be remembered that the loss Philphos purportedly incurred is ₱1,958,559,869.00. Certainly, the amount saved is paltry compared to the loss sustained, and will not significantly contribute in salvaging its financial condition. In fact, the salaries and benefits of the retrenched employees constitute less than 2% of the total amount of the loss. This casts serious doubt on Philphos' contention that the retrenchment was necessary to save it from dire financial straits. This further proves that Philphos could have availed of other money saving measures rather than directly targeting its employees' livelihood.

Philphos failed to apply a fair and reasonable criteria in implementing the retrenchment.

There is no showing that Philphos used a fair and reasonable criteria in choosing who to retain and who to retrench. Although it alleged that it applied a fair criteria in implementing its retrenchment program, the records are utterly bereft of actual proof showing that said criteria was indeed applied.[109] On the contrary, most of the retrenched employees were senior employees who have been serving the company for 23 long years. Philphos failed to explain why they were chosen to be retrenched.

The illegally dismissed employees are entitled to reinstatement and backwages.

The retrenched employees were illegally dismissed. Correlatively, they are entitled to the twin reliefs of reinstatement without loss of seniority rights and the payment of backwages.[110]

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[108] *Rollo* (G.R. Nos. 205528-29), pp. 246-248.

[109] *Id*. at 89.

[110] *ICT Marketing Services, Inc. v. Sales*, 769 Phil. 498, 512 (2015), citing *Reyes, et al. v. RP Guardians Security Agency, Inc.*, 708 Phil. 598, 603-604 (2013).

However, it must be noted that the employees have received their separation pay, save for Mayol and Beltran, who are seeking their reinstatement. The CA denied their claim for reinstatement due to strained relations, and thus, ordered the payment of separation pay. **The Court does not agree.**

As cautioned in *Rodriguez v. Sintron Systems, Inc.*:

> x x x the doctrine of strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations"; otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. That is human nature. Strained relations must be demonstrated as a fact. The doctrine should not be used recklessly or loosely applied, nor be based on impression alone.[111]

In the case at bar, there is no compelling evidence to support the CA's conclusion that the parties' relationship had become so sour that reinstatement is no longer viable and desirable. Further, it must be noted that Mayol and Beltran have been clamoring for their reinstatement since the filing of their complaint in 2007. Hence, it is time that they finally be granted such relief.

It must be noted however that the order of reinstatement strictly applies to Mayol and Beltran considering that the other employees have already received their separation pay and did not request for their reinstatement. The employees' petition clearly shows that only Mayol and Beltran sought their reinstatement.[112]

Next, all employees including Mayol and Beltran, are entitled to the payment of their backwages, computed from the date of their retrenchment which is their illegal termination, until the finality of the Court's ruling.[113] The base figure in determining

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[111] G.R. No. 240254, July 24, 2019. See also *Claudia's Kitchen, Inc., et al. v. Tanguin*, 811 Phil. 784, 800 (2017).

[112] *Rollo* (G.R. Nos. 205797-98), pp. 6, 10.

[113] *Aliling v. Feliciano, et al.*, 686 Phil. 889 (2012); *CICM Mission Seminaries (Maryhurst, Maryheights, Maryshore and Maryhill) School of Theology, Inc., et al. v. Perez*, 803 Phil. 596 (2017).

full backwages is fixed at the salary rate received by the employees at the time they were illegally dismissed. The award shall also include the benefits and allowances they regularly received as of the time of their illegal dismissal, as well as those granted under the CBA, if any.[114]

The employees who signed the Receipt and Release are likewise entitled to the fruits of this judgment.

Remarkably, in *Mobilia Products, Inc. v. Demecillo, et al.*, the Court underscored that if the retrenchment is illegal, the quitclaims signed by the retrenched employees shall be deemed as vitiated by vices of consent:

> It is the duty of the employer to prove with clear and satisfactory evidence that legitimate business reasons exist to justify retrenchment. Failure to do so inevitably results in a finding that the dismissal is unjustified. Accordingly, where the retrenchment is illegal and of no effect, as in this case, the quitclaims were therefore not voluntarily entered into by the workers. Their consent had been vitiated by mistake or fraud.[115] (Citations omitted)

Similar pronouncements were rendered in *F.F. Marine Corporation*,[116] and *Emco Plywood Corporation*.[117] Furthermore, in said cases, the Court articulated that a quitclaim shall not bar the employees from receiving the benefits that they are legally entitled to:

> Contrary to this assumption, the mere fact that respondents were not physically coerced or intimidated does not necessarily imply that they freely or voluntarily consented to the terms thereof. Moreover, petitioners, not respondents, have the burden of proving that the Quitclaims were voluntarily entered into.

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[114] *United Coconut Chemicals, Inc. v. Almores*, 813 Phil. 685, 698-699 (2017).

[115] *Mobilia Products, Inc. v. Demecillo, et al.*, 597 Phil. 621, 630 (2009).

[116] *F.F. Marine Corporation v. The 2nd Division, NLRC*, supra note 94.

[117] *Emco Plywood Corporation v. Abelgas*, supra note 100.

Furthermore, in *Trendlin Employees Association-Southern Philippines Federation of Labor (TEA-SPFL) v. NLRC* and *Philippine Carpet Employees Association v. Philippine Carpet Manufacturing Corporation*, similar retrenchments were found to be illegal, as the employers had failed to prove that they were actually suffering from poor financial conditions. In these cases, the Quitclaims were deemed illegal, as the employees' consents had been vitiated by mistake or fraud.

These rulings are applicable to the case at bar. Because the retrenchment was illegal and of no effect, the Quitclaims were therefore not voluntarily entered into by respondents. Their consent was similarly vitiated by mistake or fraud. The law looks with disfavor upon quitclaims and releases by employees pressured into signing by unscrupulous employers minded to evade legal responsibilities.

As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. The amounts already received by the present respondents as consideration for signing the Quitclaims should, however, be deducted from their respective monetary awards.[118] (Citations omitted and emphasis supplied)

Based on the foregoing, the employees who signed the Receipt and Release are entitled to an award of backwages.

The employees are not entitled to 200% separation pay and early retirement pay; neither are they entitled to moral and exemplary damages.

The Court finds no basis to award the employees 200% separation pay, and 200% retirement pay. The grant of such benefits was not part of a standard company policy or a customary practice. Remarkably, the term "customary" denotes a long-established and constant practice, connoting regularity.[119]

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[118] Id. at 482-483.

[119] *Millares v. National Labor Relations Commission*, 365 Phil. 42, 51-52 (1999).

Contrary to this definition, the awards were distinctly granted on special occasions. Particularly, the 200% separation pay was given only once to Philphos' employees who were affected by the Rightsizing Program in August 1999. Meanwhile, the 200% retirement pay was granted pursuant to Philphos' Early Retirement Program in 2000. The afore-mentioned initiatives are not adjuncts of the retrenchment program.[120] Neither did the employees prove that the awards are granted under the CBA.

Finally, the Court denies the employees' prayer for moral and exemplary damages, for lack of factual and legal basis. Nonetheless, the employees are entitled to attorney's fees equivalent to ten percent of the total monetary award, since the instant case includes a claim for unlawfully withheld wages, and the employees were forced to litigate to protect their rights.[121] All amounts due shall earn a legal interest of six percent (6%) *per annum*.[122]

WHEREFORE, premises considered, the January 17, 2011 Decision and January 17, 2013 Resolution of the Court of Appeals in the consolidated cases of CA-G.R. SP No. 04267 and CA-G.R. SP No. 04499 are **AFFIRMED with modification** in that (i) Alejandro Mayol and Joelito Beltran shall be reinstated to their former positions without loss of seniority rights; and (ii) the employees shall be entitled to attorney's fees equivalent to 10 percent (10%) of the total monetary award. All amounts due shall be subject to a legal interest of six percent (6%) *per annum* from the finality of the Court's Decision until full satisfaction.

The Labor Arbiter is hereby **DIRECTED** to compute the amounts due to the employees in accordance with the Court's ruling.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Zalameda, JJ.*, concur.

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[120] *Rollo* (G.R. Nos. 205528-29), p. 89.

[121] LABOR CODE OF THE PHILIPPINES, Article 111.

[122] *Nacar v. Gallery Frames*, 716 Phil. 267, 278-279 (2013).

FIRST DIVISION

[G.R. No. 211185. December 9, 2020]

JIMMY PAEZ, *Petitioner, v.* **MARINDUQUE ELECTRIC COOPERATIVE, INC., WILLIAM BOBIS, BEETHOVEN AREVALO, JOEL PALATINO, and CARMENCITA GAAN,** *Respondents*.

APPEARANCES OF COUNSEL

Cariño and Associates Law Office for petitioner.
The Barristers Office for respondents.

D E C I S I O N

GAERLAN, *J.*:

Subject to review under Rule 45 of the Rules of Court at the instance of Jimmy Paez (petitioner) is the February 25, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 112151, affirming with modification the May 29, 2009 Decision[2] of the National Labor Relations Commission (NLRC) in NLRC Case No. RAB-IV-05-00149-05-MA.

The Antecedents

Petitioner was hired by respondent Marinduque Electric Cooperative, Inc. (MARELCO) on March 16, 1984. At the time of his alleged illegal termination on March 21, 2005, he occupied the position of Sub-Office Chief.[3]

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[1] *Rollo*, pp. 38-63; penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier (now a Member of this Court), concurring.

[2] Id. at 114-153; penned by Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino, concurring.

[3] Id. at 118.

Sometime in 2004, MARELCO discovered certain highly irregular activities committed by some of its employees regarding the Smart and Globe Projects. It came to its knowledge that several Globe cell sites were illegally tapped to the service connection of member-consumers near the area. MARELCO, thus, made an inquiry through an Ad-hoc Committee created for such purpose. The Committee invited petitioner, among others, to shed some light on the matter.[4] It specifically asked him for the name of the person who ordered or approved the energization of the Globe cell sites and the installation of the KWH Meter at Brgy. San Antonio, Sta. Cruz. Petitioner, however, answered that the go signal was given by someone from the Technical Services Department but he could not remember who the person was considering that the approval was made through a telephone conversation and he failed to identify the voice of the person he was then talking to.[5]

Later, petitioner received three letters of invitation dated January 24, 2005, February 10, 2005 and February 15, 2005. He was invited to attend a further investigation regarding the irregularities in the Globe and Smart Projects.[6] Unfortunately, he failed to do so for certain reasons. For failure to attend, the investigating committee deemed it as a waiver of his right to be heard and to present evidence.[7]

After the inquiry was terminated, petitioner was placed under floating status pending completion of the investigation on the ground that he was "concealing information apparently designed for whatever favor either or both yourself and any party/ies which may be classified as collusion or conspiracy including conflict of interest x x x."[8]

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[4] Id. at 41-42.

[5] Id. at 42.

[6] Id. at 127.

[7] Id. at 103.

[8] Id. at 90.

On March 21, 2005, MARELCO terminated the services of petitioner based on the ground above-quoted. On March 28, 2005, petitioner made an appeal stating that he had nothing to do with the Globe and Smart Construction. This time, petitioner averred that, at that time, he was already recalled as Area Supervisor of Sta. Cruz and was assigned to three Islands (Polo, Maniwaya, Mogpog); and he decided to have the cell sites energized because "I thought there were no more problems as the documents were complete and the required payments have been paid."[9] Notwithstanding, MARELCO did not reverse its earlier decision terminating petitioner. Thus, petitioner filed a complaint for illegal dismissal before the Labor Arbiter, which was docketed as NLRC RAB IV-04-00104-05-MA.[10]

Several of MARELCO's employees, who were likewise terminated for their alleged participation in the irregularities in the Smart and Globe projects, also filed illegal dismissal complaints against MARELCO.

For its part, MARELCO, averred that petitioner violated Section 7.2.9 of the Code of Employees Conduct for knowingly giving untruthful statements or concealing material facts to the Ad-hoc Committee and the Executive Committee.[11] Thus, it meted the penalty of dismissal.

The Labor Arbiter Ruling

Labor Arbiter Robert A. Jerez rendered the June 30, 2008 Decision[12] dismissing petitioner's and his co-complainants' consolidated complaints for lack of merit. The Labor Arbiter ratiocinated that petitioner, in particular, committed serious misconduct and fraud or willful breach of trust reposed in him by his employer, MARELCO, when he refused to divulge the name of the person who allegedly approved the energization

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[9] Id. at 91.

[10] Id. at 103.

[11] Id. at 99.

[12] Id. at 79-112.

of the Globe cell sites and the installation of the KWH Meter at Brgy. San Antonio, Sta. Cruz.[13] Hence, there was just cause for his termination. In other words, the termination was with factual and legal bases. The Labor Arbiter, thus, disposed the case in this wise:

> WHEREFORE, premises considered, the instant consolidated Complaints are DISMISSED for lack of merit.
>
> SO ORDERED.[14]

Undaunted, petitioner and his co-complainants filed an appeal to the NLRC.

The NLRC Ruling

On appeal, the NLRC reversed the dismissal of the consolidated complaints. In its Decision[15] promulgated on May 29, 2009, the NLRC ruled that petitioner and the other terminated employees were illegally dismissed. In ruling in favor of petitioner, the NLRC concluded that petitioner's failure to answer the question during the inquiry did not constitute fraud and dishonesty. The *fallo* of the NLRC's Decision reads:

> WHEREFORE, prescinding from the foregoing, the appeal is hereby given due course. The decision appealed from is REVERSED and SET ASIDE and a NEW ONE ENTERED finding the dismissal illegal and ordering Marinduque Electric Cooperative, Inc. to pay the complainants their backwages and retirement pay.
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> SO ORDERED.[16]

MARELCO then moved for reconsideration. It was, however, denied. Hence, MARELCO filed a petition for *certiorari* with the CA.

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[13] Id. at 109.

[14] Id. at 112.

[15] Id. at 114-153.

[16] Id. at 153.

The CA Ruling

In the assailed Decision[17] promulgated on February 25, 2013, the CA affirmed with modification the NLRC's Decision, the decretal portion of which reads:

> WHEREFORE, the assailed Decision dated May 29, 2009 of the National Labor Relations Commission is hereby AFFIRMED with MODIFICATIONS, as follows:
>
> 1. Considering the illegality of their dismissal, Laudilino Los Baños, Collin Mananzares and Geoffrey Lingon are entitled to payment of backwages from the time they were illegally dismissed until the finality of this Decision and separation pay, in lieu of reinstatement, equivalent to one month pay for every year of service.
>
> 2. The dismissal of Jimmy Paez is valid hence, the monetary awards granted to him by the NLRC are hereby deleted.
>
> SO ORDERED.[18]

In modifying the NLRC's Decision, the CA concluded that petitioner failed to ensure that Globe's application had gone through the proper procedure before acting thereon. He approved Globe's request for power connection without instruction from the Technical Services Department and without prior approval from the Board of Directors. These, according to the Court of Appeals, are sufficient bases for the loss of trust and confidence reposed on him by MARELCO.[19]

Aggrieved, petitioner moved for reconsideration. It was, however, denied in a Resolution[20] dated February 5, 2014.

Hence, the instant petition for review on *certiorari*[21] interposing a lone issue:

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[17] Id. at 38-63.

[18] Id. at 62-63.

[19] Id. at 61-62.

[20] Id. at 65-69.

[21] Id. at 10-34.

Issue

THE HONORABLE CA HAS ISSUED THE ASSAILED DECISION DATED 25 FEBRUARY 2013 AND ASSAILED RESOLUTION DATED 5 FEBRUARY 2014 IN A WAY THAT IS NOT IN ACCORD WITH THE LAW AND THE APPLICABLE DECISION OF THE SUPREME COURT, AND GROUNDED ON GRAVE MISAPPREHENSION OF FACTS BECAUSE:

I.

THE COPY OF THE AMENDED PETITION FOR CERTIORARI SERVED TO PETITIONER DOES NOT CONTAIN ANY CAUSE OF ACTION AGAINST HIM;

II.

THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING ITS DECISION DATED 29 MAY 2009;

III.

PETITIONER WAS UNJUSTLY AND ILLEGALLY DISMISSED FROM SERVICE; HENCE, HE IS ENTITLED TO BACKWAGES AND SEPARATION PAY; [AND]

IV.

ASSUMING ARGUENDO THAT PETITIONER HAS COMMITTED AN INFRACTION, A LESS SEVERE PENALTY THAN DISMISSAL FROM SERVICE WILL SUFFICE.[22]

The Court's Ruling

The petition is meritorious.

Petitioner insists that the only ground for his dismissal, that is, his failure to reveal the name of the person who approved the energization of the Globe cell sites, is not tantamount to willful disobedience and fraud or loss of trust and confidence reposed on him by MARELCO. The CA, therefore, made a reversible error when it reversed the NLRC decision based on

[22] Id. at 19-20.

a misconception that petitioner was dismissed because of his failure to abide by the proper procedure of the company. Petitioner likewise contends that assuming that he committed an infraction, a less severe penalty than dismissal from service will suffice considering the length of service (21 years) that he had rendered for MARELCO.[23]

MARELCO, on the other hand, while admitting that petitioner was dismissed due to his willful concealment of facts during investigation, avers that subsequent development and evidence prove that petitioner failed to comply with the proper company procedure, such as failure to wait for the approval of the Board of Directors before pushing through with the energization of the cell sites. This, per MARELCO, is a valid ground for the termination of petitioner's employment.[24]

This Court rules in favor of the petitioner.

At the outset, records show that petitioner was terminated from employment on the ground of failure to identify the person who allegedly approved and instructed him to energize the San Antonio Globe cell sites and to install the KWH Meter during the inquiry. The Labor Arbiter even concluded that such omission is tantamount to fraud or willful breach of the trust reposed on him, and/or willful disobedience which are just causes for termination of employment.

This Court disagrees.

Under Article 297 (formerly Article 282) of the Labor Code, an employer may terminate the services of an employee for the following just causes:

> Article 297. [282] *Termination by Employer*. - An employer may terminate an employment for any of the following causes:
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> **(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;**

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[23] Id. at 25-31.

[24] Id. at 206-207.

(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. (Emphasis supplied)

To warrant termination of employment under Article 297 (a) of the Labor Code, particularly for willful disobedience, it is required that: (a) the conduct of the employee must be willful or intentional; and (b) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge.[25] Willfulness must be attended by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination.[26] It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer.[27]

Meanwhile, for fraud or loss of trust and confidence to be valid a ground for termination, the employer must establish that: (1) the employee holds a position of trust and confidence; and (2) the act complained against justifies the loss of trust and confidence.[28] The first requisite mandates that the erring employee must be holding a position of trust and confidence.[29] It is the breach of this trust that results in the employer's loss of confidence in the employee.[30]

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[25] *Coca-Cola Bottlers, Phils., Inc. v. Kapisanan ng Malayang Manggagawa sa Coca-Cola-FFW*, 492 Phil. 570, 585 (2005).

[26] *Dongon v. Rapid Movers and Forwarders Co., Inc.*, 716 Phil. 533, 543-544 (2013).

[27] Id. at 544.

[28] *Lagahit v. Pacific Concord Container Lines*, 778 Phil. 168, 184-185 (2016).

[29] *PJ Lhuillier, Inc. v. Camacho*, 806 Phil. 413, 426 (2017).

[30] *Cruz v. Bank of the Philippine Islands*, 703 Phil. 504, 516 (2013).

The law contemplates two classes of positions of trust. The first class consists of managerial employees. They are those who are vested with the power or prerogative to lay down management policies and to hire, transfer, suspend, layoff, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class consists of cashiers, auditors, property custodians, etc. who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[31]

Under the foregoing standards, the disobedience attributed to petitioner, which, to reiterate, is his refusal to divulge the name of the person who instructed him to push through with the energization of Globe cell sites and the installation of the KWH Meter, could not be justly characterized as willful within the contemplation of Article 297 of the Labor Code. He neither benefited from it, nor thereby prejudiced the business interest of MARELCO. In fact, despite his failure to name the person who instructed him to push through with the project, MARELCO was able to finish the investigation and arrive at a conclusion.

Furthermore, for the past 21 years that he had been in the service of MARELCO, records reveal that he had yet to be charged for any offense or infraction. This only shows his lack of propensity to disobey his superiors and the company rules. Otherwise stated, there could be no wrong or perversity on his part that warrants the termination of his employment based on willful disobedience.

Neither can petitioner be charged of fraud or loss of trust and confidence.

To recall, only managerial employees and fiduciary rank-and-file employees may be charged with fraud or loss of trust and confidence. Now, managerial employees are defined as those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off,

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[31] *PJ Lhuillier, Inc. v. Camacho,* supra.

recall, discharge, assign or discipline employees or effectively recommend such managerial actions. They refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff. Officers and members of the managerial staff perform work directly related to management policies of their employer and customarily and regularly exercise discretion and independent judgment.[32]

The second class or fiduciary rank-and-file employees consist of cashiers, auditors, property custodians, etc., or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.[33]

In the instant case, petitioner was neither a managerial nor a fiduciary rank-and-file employee. While having the position of Sub-Office Chief of MARELCO at the time of his dismissal, records show that he was not vested with powers to lay down management policies and recommend managerial actions. Likewise, he was not in charged with the care and custody of his employer's money or property. Simply put, petitioner did not hold a position of trust and confidence. Thus, Article 297 (c) of the Labor Code will never apply to petitioner's case.

From the foregoing, this Court holds and so rules that petitioner's failure to divulge the identity of the person who instructed him to energize the cell sites does not constitute willful disobedience, and fraud or willful breach of trust and confidence as to warrant his termination.

Furthermore, while during his appeal with MARELCO after his termination, petitioner admitted to energizing the cell sites because "I thought there were no more problems as the documents

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[32] *Wesleyan University-Philippines v. Reyes*, 740 Phil. 297, 311 (2014).

[33] Id.

were complete and the required payments have been paid,"[34] such admission was not made the basis for his termination. The CA, therefore, committed a reversible error when it concluded that such was the ground for petitioner's dismissal. To raise this, his failure to ensure that Globe's application had gone through the proper procedure before acting thereon, as a ground for petitioner's dismissal, the CA had deprived petitioner of due process.

It bears stressing at this point that MARELCO, in its comment,[35] admits that the only basis for petitioner's dismissal is his failure to name and identify the person who approved the energization of cell sites and the installation of the KWH meter. In fact, the Labor Arbiter and the NLRC made no mention as to petitioner's failure to await for the approval of the Board of Directors before pushing through with the energization of the cell sites. This Court is, thus, baffled, why the CA based petitioner's dismissal on a ground different from the established facts.

As things are, while petitioner indeed committed an infraction or dishonesty when he refused to identify the person who instructed him to energize the cell site, his outright dismissal from service is not commensurate to his misdemeanor. Likewise, it is settled that in determining the penalty to be imposed on an erring employee, due consideration must be given to the employee's length of service and the number of violations he committed during his employ.[36]

In the case at bench, considering that petitioner has been in the service of MARELCO for 21 years prior to his dismissal, and nowhere in the records does it appear that he committed any previous infractions of company rules and regulations, this Court holds and so rules that the decision of the NLRC declaring him illegally dismissed, despite his infraction, is just and

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[34] *Rollo*, p. 91.

[35] Id. at 203-211.

[36] *De Guzman v. National Labor Relations Commission*, 371 Phil. 192, 204 (1999).

equitable. Petitioner's dismissal from work would be too severe a penalty under the circumstances.

All told, this Court concludes that the findings of the NLRC are supported by substantial evidence. Clearly, petitioner's allegation of illegal dismissal has legal and factual bases. The CA, therefore, committed reversible error when it ruled that petitioner was legally dismissed. A reversal thereof is, thus, warranted in this case.

WHEREFORE, in view of the foregoing premises, the instant petition is **GRANTED**. The February 25, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 112151, is **REVERSED and SET ASIDE**.

The May 29, 2009 Decision of the National Labor Relations Commission is **REINSTATED**.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Zalameda, JJ.*, concur.

THIRD DIVISION

[G.R. No. 215615. December 9, 2020]

LILIA M. TANINGCO, DENNIS M. TANINGCO and ANDREW M. TANINGCO, *Petitioners, v.* **REYNALDO FERNANDEZ, LOURDES P. SALA, EMMA P. PEREZ, AUGUSTO F. PEREZ, DOMINADOR PEREZ, JOSE F. PEREZ, MILAGROS F. PEREZ, TEODORO F. PEREZ, ADORACION S. PEREZ, JOSEPHINE P. SAN AGUSTIN, ALEX S. PEREZ, ELENIDA I. PEREZ, MICHAEL S. PEREZ, MANUEL L. PEREZ, ALBERTO L. PEREZ,** *Respondents*.[*]

APPEARANCES OF COUNSEL

Dennis M. Taningco for petitioners.
Adolfo M. Iligan for respondents.

D E C I S I O N

HERNANDO, *J.*:

In this Petition for Review on *Certiorari* and Prohibition,[1] petitioners Lilia M. Taningco, Dennis M. Taningco, and Andrew M. Taningco (petitioners) assail the May 13, 2014[2] and October 27, 2014[3] Resolutions of the Court of Appeals (CA) in CA-G.R. CEB SP No. 05017 which denied their Motion to Set Aside

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[*] Judge Virgilio Luna Paman and Judge Alicia Cruz-Barrios are deleted as party-respondents pursuant to Section 4, Rule 45 of the Rules of Court.

[1] *Rollo*, pp. 7-27.

[2] *Id.* at 34-36; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court), and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap.

[3] *Id.* at 42-44.

Resolution [Dated November 25, 2013] and Entry of Judgment,[4] and their Motion for Reconsideration,[5] respectively.

The Factual Antecedents:

Civil Case No. 1674, a Complaint for Quieting of Title and/or Recovery of Possession and Ownership, was resolved by the Municipal Trial Court (MTC) of Kalibo, Aklan in favor of the respondents and against petitioners. The *fallo* of the Decision[6] reads:

> WHEREFORE, premises considered, defendants Jose Taningco, Harry Taningco and Jose Taningco, Jr. and their privies and successors-in-interest are hereby ordered to vacate the two hundred sixty three (263) square meters of Lot 191-A at G. Ramos St., Poblacion, Kalibo, Aklan and to turn it over to the plaintiffs Reynaldo Fernandez, Lourdes P. Sala, Emma F. Perez, Augusto F. Perez, Dominador F. Perez, Milagros F. Perez, Josephine P. San Agustin, Teodoro F. Perez, Jose F. Perez, Adoracion F. Perez, Elenita L. Perez, Alex S. Perez, Michael S. Perez, Alberto L. Perez and Manuel L. Perez or their successors-in-interest.
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> SO ORDERED.[7]

Petitioners' appeal was denied by the Regional Trial Court (RTC) and subsequently by the appellate court whose Decision dated March 29, 2006[8] became final and executory per the October 8, 2006 Entry of Judgment.[9] Thus, respondents moved for issuance of a writ of execution[10] which the MTC granted.

In a bid to stop the implementation of the writ, Jose P. Taningco, Jr. (Jose Jr.) filed a Petition for Annulment of

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[4] Id. at 32-33.

[5] Id. at 37-40.

[6] Id. at 121-139; penned by Judge Paz Esperanza M. Cortes.

[7] Id. at 139.

[8] Id. at 177-183.

[9] Id. at 185.

[10] CA *rollo*, p. 71; as noted in the Writ of Execution issued by the MTC on October 15, 2007; CA *Rollo*, p. 71.

Judgment[11] which was, however, dismissed by the RTC. His appeal before the CA, docketed as CEB-CV No. 02128, was likewise denied in the January 23, 2009 Decision;[12] the appellate court affirmed the RTC's dismissal of the Petition for Annulment of Judgment. Jose Jr.'s Petition for Review on *Certiorari* before this Court was dismissed in Our March 8, 2010 Resolution.[13]

Meanwhile, the mother and brothers of Jose Jr., herein petitioners, filed a Motion to Quash the Writ of Execution claiming that it was invalidly issued since they were not furnished a copy of the order of substitution. They also argued that there was no valid substitution of the defendant Jose P. Taningco, Sr. (Jose Sr.) who died during the pendency of Civil Case No. 1674.

The MTC, however, denied[14] petitioners' Motion to Quash for being a collateral attack against the already final and immutable March 29, 2006 Decision of the appellate court. Considering the finality of the said CA Decision, the MTC held that it was its ministerial duty to grant the writ in accordance with Section 1, Rule 39 of the Rules of Court.

The MTC also ruled that Jose Sr. was properly substituted. It ratiocinated that it directed the substitution of Jose Sr. by his wife and children, including petitioners in its February 6, 2002 Order, after it was informed by their counsel, Atty. Fidencio Raz, of Jose Sr.'s demise in a Notice of Death and Substitution dated November 21, 2001. Besides, the absence of a proper substitution will not nullify the trial court's jurisdiction unless there is a clear showing of violation of due process which is not availing in the instant case.

The MTC denied petitioners' motion for reconsideration hence, they filed a Petition for *Certiorari* with prayer for preliminary

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[11] *Rollo*, p. 186; as noted by the Court of Appeals in its January 23, 2009 Decision in CA-G.R. CEB-CV No. 02128.

[12] Id. at 186-191.

[13] Id. at 193.

[14] Id. at 65-69.

injunction and temporary restraining order (TRO) before the RTC, Branch 7 of Kalibo, Aklan.

Ruling of the Regional Trial Court (RTC):

The RTC dismissed petitioners' Petition for *Certiorari* and denied their prayer for preliminary injunction and TRO,[15] *viz.*:

> WHEREFORE, premises considered, the prayer for writ of preliminary injunction is hereby DENIED for lack of merit. And unless parties still have other evidence to present in their main petition for *certiorari*, they are hereby directed to formally manifest the same within five (5) days from receipt of this order, otherwise the evidence and arguments presented in this incident preliminary injunction are deemed adopted for the main action which is also deemed dismissed.
>
> SO ORDERED.[16]

Thereafter, petitioners' motion for the inhibition[17] of the RTC presiding judge was also denied.[18] Subsequently, in an Order[19] dated on January 5, 2010, the RTC denied petitioners' prayer for preliminary injunction and TRO and dismissed the Petition for *Certiorari*.

Aggrieved, petitioners filed their respective Motions for Reconsideration which were both denied by the RTC in its Order[20] dated February 18, 2010.

Hence, petitioners filed a Petition for *Certiorari* before the appellate court. They argued that the RTC gravely abused its discretion when it denied their Motion for Inhibition and prayer for preliminary injunction and TRO, dismissed the Petition for *Certiorari*, and denied their Motions for Reconsideration. They

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[15] Id. at 106-110.

[16] Id. at 110.

[17] CA *rollo*, pp. 200-205.

[18] Id. at 57-58.

[19] *Rollo*, p. 114.

[20] Id. at 120.

also averred that the MTC did not acquire jurisdiction over them as its order of substitution was invalid.

Ruling of the Court of Appeals:

In its February 28, 2013 Decision,[21] the CA dismissed the Petition for *Certiorari* for being a wrong remedy. In any case, it found that the RTC did not gravely abuse its discretion when it issued the assailed orders. The appellate court observed that the RTC's denial of petitioners' prayer for writ of preliminary injunction and TRO was grounded on insufficiency of evidence. Petitioners also did not attend the hearing for the reception of their additional evidence.

The CA also noted that there was no ground for the mandatory disqualification of the RTC judge from the case. Besides, the allegations of pre-judgment, bias, prejudice and partiality against the RTC judge were without basis.

In addition, the appellate court held that Jose Sr. was formally substituted as shown in the February 6, 2002 Order of the MTC. In any event, the lack of a proper substitution will not invalidate the proceedings save when there is a violation of due process which is not availing in Civil Case No. 1674.

On January 2, 2014, petitioners received a copy of the November 25, 2013 CA Resolution declaring the February 28, 2013 Decision to have become final and executory on May 7, 2013, hence, to be recorded in the Book of Entries of Judgment.

Petitioners immediately filed before the CA a motion[22] to set aside its November 25, 2013 Resolution and Entry of Judgment on the ground that they did not receive a copy of the appellate court's February 28, 2013 Decision. Hence, their failure to file a motion for reconsideration on the same before the appellate court.

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[21] Id. at 196-209.

[22] Id. at 32-33.

However, the CA, in its May 13, 2014 Resolution,[23] denied petitioners' motion finding that petitioners, through their counsel, Atty. Dennis M. Taningco (Atty. Taningco), actually received a copy of the CA's February 28, 2013 Decision as evidenced by Registry Return Card No. 1873.

Petitioners sought for reconsideration[24] insisting that Atty. Taningco did not receive a copy of the said CA Decision. They averred that their counsel's home and office addresses are one and the same. In his household, Atty. Taningco lives with his wife and son, Dennis, Jr. However, neither his wife nor his son received on his behalf the CA Decision. Petitioners further requested a certified copy of the registry return card as it was not attached to the May 13, 2014 CA Resolution.[25]

In its October 27, 2014 Resolution,[26] the CA denied petitioners' motion for reconsideration there being no new substantial arguments to warrant the grant of the same. Contrary to petitioners' contention, the registry return card clearly showed that a certain Mrs. Taningco received the appellate court's notice of decision. Hence, the CA reiterated its stance that notice to counsel is notice to client.[27]

The CA also noted that the said motion is a prohibited pleading as it is deemed to be a second motion for reconsideration.[28]

Lastly, the CA stressed that it was Atty. Taningco's duty to secure a certified true copy of the registry return card and not wait for the CA to provide him with a copy thereof. The appellate court thus reminded Atty. Taningco to exercise reasonable care, skill and diligence in handling the cases of his clients.[29]

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[23] Id. at 34-36.

[24] CA *rollo*, pp. 278-282.

[25] Id.

[26] *Rollo*, pp. 42-44.

[27] Id.

[28] Id.

[29] Id.

Hence, petitioners filed the instant Petition for Review on *Certiorari*.

Issues

Petitioners aver that:

I. Respondent Court of Appeals-Cebu gravely erred in not furnishing petitioners with a copy of the Decision dated February 28, 2013, and in not resolving judiciously the principal issues posed in the petition in CA-G.R. CEB SP No. 05017.

II. Respondent Court of Appeals-Cebu gravely erred in not declaring that the impugned orders of respondent Judge Paman are all invalid for having been issued with grave abuse of discretion, without or in excess of jurisdiction, and in a manner contrary to and in gross violation of the laws.

III. Respondent Court of Appeals committed grave abuse of discretion in not ruling that there was no valid substitution of deceased defendant in MTC Civil Case 1674, that MTC Kalibo is bereft of jurisdiction on the subject matter of the case, and that the MTC Decision dated March 7, 2005 and its writ of execution and demolition are void *ab initio*.[30]

Our Ruling

The Petition lacks merit.

Notice to counsel is notice to parties.

When a party is represented by counsel of record, service of orders and notices must be made upon said attorney.[31] Notice sent to counsel of record binds the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment, valid and regular on its face.[32]

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[30] *Id.* at 16-17.

[31] *Cervantes v. City Service Corporation*, 784 Phil. 694, 699 (2016).

[32] *GCP-Manny Transport Services, Inc. v. Hon. Principe*, 511 Phil. 176, 187-188 (2005).

In the case at bench, Atty. Taningco, petitioners' counsel of record and also one of the petitioners in the case, was served with a copy of the CA Decision on April 8, 2013 as evidenced by Registry Return Card No. 1873, at his office address on record, which is also his home address. Said copy was duly received by Mrs. Taningco.

Verily, Mrs. Taningco is presumed authorized to receive the CA Decision on behalf of Atty. Taningco that was sent to the office address on record. It necessarily follows that petitioners, through Atty. Taningco, duly received the said decision in the ordinary course of business. Hence, in the absence of competent evidence to prove otherwise, the legal presumption of regularity in the performance of official duty with respect to service of notice stands.[33]

Moreover, petitioners failed to present even a scintilla of evidence other than the bare assertion of non-receipt thereof and a mere photocopy of the identification cards with signatures therein of Mrs. Taningco and Dennis Jr.

Thus, the Court holds that the CA did not err in denying petitioners' motion to set aside its November 25, 2013 Resolution and entry of judgment declaring the CA Decision dated February 8, 2013 to be final and executory.

A final and executory decision is immutable.

A decision or order becomes final and executory if the aggrieved party fails to appeal or move for a reconsideration within 15 days from his or her receipt of the court's decision or order disposing of the action or proceeding.[34] Thus, under the doctrine of immutability of judgment, a decision or order that has attained finality can no longer be modified in any respect, even if the modification is meant to correct erroneous

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[33] *Scenarios, Inc. v. Vinluan*, 587 Phil. 351, 359 (2008).

[34] *Heirs of Bihag v. Heirs of Bathan*, 734 Phil. 191, 202 (2014).

conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land.[35]

The doctrine is grounded on public policy and sound practice which must not simply be ignored.[36] It is adhered to by the courts to end litigations albeit the presence of errors.

In *Mocorro, Jr. v. Ramirez*,[37] the Court has exhaustively discussed the principle of the finality of judgment as follows:

> A definitive final judgment, however erroneous, is no longer subject to change or revision.
>
> A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.
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> The only exceptions to the rule on the immutability of final judgments are (1) the correction of clerical errors, (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party, and (3) void judgments.[38]

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[35] *National Housing Authority v. Court of Appeals*, 731 Phil. 400, 405 (2014).

[36] Id.

[37] 582 Phil. 357 (2008).

[38] Id. at 366-367.

Petitioners received a copy of the February 28, 2013 Decision of the appellate court on April 8, 2013. Despite receipt thereof, they failed to file a motion for reconsideration within the 15-day reglementary period. Therefore, the appellate court's Decision became final and can no longer be assailed by then for being immutable and unalterable.

Disrespectful, inappropriate, and offensive language used by Atty. Taningco in the present Petition.

The Court notes the following disrespectful, inappropriate, and offensive language used by Atty. Taningco in the present petition, to wit:

> The MTC Decision dated March 7, 2005 in Civil Case 1674 is of patent nullity, for having been issued without jurisdiction over the subject matter, and for lack of due process of law. Jurisdiction is vested with RTC Kalibo as cadastral court. Due process of law is lacking as there was no order of substitution upon the demise of the principal defendant, Atty. Jose P. Taningco.
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> x x x x
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> **Aforesaid Decision was rendered by then MTC Judge PAZ ESPERANZA M. CORTES (now RTC Judge of Taguig City who granted bail in the celebrated case of movie & TV personality Vhong Navarro). It was apparently railroaded to finality as the appeals by other defendant with RTC Kalibo and before Court of Appeals-Cebu were all dismissed. The former RTC Executive Judge of Kalibo, Sheila Martelino Cortes (now retired) is the mother of Judge Paz Esperanza Martelino Cortes, while CA Presiding Justice Andres C. Reyes is the latter's uncle. The Presiding Justice's mother is a Cortes from Balete, Aklan**.[39] (Emphasis supplied)

Atty. Taningco is reminded of his duty as a lawyer to observe and maintain the respect due to the courts and judicial officers.[40] He should avoid using offensive or menacing language or

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[39] *Rollo*, p. 8.

[40] *Alpajora v. Calayan*, 823 Phil. 93, 109 (2018).

behavior before the court and refrain from attributing to a judge motives that are not supported by the record or have no materiality to the case.[41] The utmost respect due to courts and their officers is enshrined not only in the Lawyer's Oath, but also under Canon 11 and Rule 11.04 of the Code of Professional Responsibility, to wit:

> Canon 11 – A lawyer shall observe and maintain the respect due to the Courts and to judicial officers and should insist on similar conduct by others.
>
> x x x x
>
> Rule 11.04 A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

In *Aparicio v. Andal*,[42] We held:

> [I]t behooves us to remind the petitioner of his basic duty "to observe and maintain the respect due to the courts of justice and judicial officers"; to conduct himself with "all good fidelity to the courts"; to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance; that his duty to render respectful civility, without fawning, to the courts is indeed essential to the orderly administration of justice. Thus, he should be courteous, fair, and circumspect, not petulant, combative, or bellicose in his dealings with the courts; and finally, that the use of disrespectful, intemperate, manifestly baseless, and malicious statements by an attorney in his pleading or motion is not only a violation of the lawyer's oath and a transgression of the canons of professional ethics, but also constitutes direct contempt of court for which a lawyer may be disciplined.[43]

His innuendoes that the MTC Judge is the daughter of the retired RTC Executive Judge of Kalibo, Aklan, and the niece of the now retired Supreme Court Associate Justice Andres C.

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[41] Id.

[42] 256 Phil. 1005 (1989).

[43] Id. at 1014-1015.

Reyes are unnecessary and irrelevant. Moreover, the language used by Atty. Taningco showed his lack of courtesy to the courts expected from every lawyer. Worse, his unfounded statement suggests that the MTC Decision was affirmed not on its merits but because of the MTC judge's blood relationship with the magistrates from the RTC and CA.

Undoubtedly, Atty. Taningco failed to be circumspect in his language in the Petition filed before this Court. By insinuating that his clients failed to get a fair decision, which he has vested personal interest as well, because of a Judge's connections with other members of the bench, tarnishes the reputation of the entire Judiciary. It is a direct attack to the very core of this institution which he should have protected and respected while advocating the interests of his clients. His malicious insinuation undermines the public's confidence in the orderly administration of justice.

We therefore find it apt to refer the foregoing matter to the Office of the Bar Confidant for its appropriate action.

WHEREFORE, the Petition for Review on *Certiorari* and Prohibition is **DENIED**. The Resolutions dated May 13, 2014 and October 27, 2014 of the Court of Appeals in CA-G.R. CEB SP No. 05017 are **AFFIRMED**.

The matter regarding the use of inappropriate, offensive and disrespectful language by Atty. Dennis M. Taningco is hereby **REFERRED** to the **OFFICE OF THE BAR CONFIDANT** for its appropriate action.

SO ORDERED.

Leonen (*Chairperson*), *Inting, Lopez,*[**] and *Rosario, JJ.*, concur.

[**] Designated as additional member per raffle dated November 23, 2020 vice J. Delos Santos who recused for having penned the assailed CA Decision.

FIRST DIVISION

[G.R. No. 216092. December 9, 2020]

MUNICIPALITY OF ISABEL, LEYTE, *Petitioner, v.* **MUNICIPALITY OF MERIDA LEYTE,** *Respondents.*

APPEARANCES OF COUNSEL

Fernandez & Associates for petitioner.
Redula Sanchez Montealegre Bauzon & Danlag-Luig Law Offices for respondent.

D E C I S I O N

GAERLAN, *J.*:

The Case

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court against the August 20, 2014 Decision[1] and the November 17, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 05255, which reversed the Decision of the Regional Trial Court (RTC) of Ormoc City, Leyte, and reinstated Resolution No. 08-327 of the *Sangguniang Panlalawigan* of Leyte. The said resolution was an adjudication of the boundary dispute between petitioner Municipality of Isabel (Isabel) and respondent Municipality of Merida (Merida), both located in and under the jurisdiction of the Province of Leyte.

The Facts

The Municipality of Isabel was created out of eight barrios of the Municipality of Merida, pursuant to Republic Act (R.A.)

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[1] *Rollo*, pp. 15-37; penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court), with Associate Justices Marilyn B. Lagura-Yap and Marie Christine Azcarraga-Jacob concurring.

[2] Id. at 38-39.

No. 191, which was enacted on June 22, 1947. R.A. No. 191 reads as follows:

REPUBLIC ACT NO. 191

AN ACT CREATING THE MUNICIPALITY OF ISABEL, PROVINCE OF LEYTE

SECTION 1. The barrios of Quiot, Sta. Cruz, Libertad, Matlang, Tolingan, Bantigue, Apale and Jonan are separated from the municipality of Merida, Province of Leyte, and constituted into a new and separate municipality to be known as the municipality of Isabel, Province of Leyte, with the seat of government at the barrio of Quiot.

SECTION 2. The municipal mayor, vice-mayor, and councilors of the new municipality shall be appointed by the President of the Philippines to hold office until their successors are elected and qualified.

SECTION 3. The municipality herein established shall begin to exist on the date fixed in a proclamation to said effect by the President of the Philippines and upon the appointment and qualification of its officers.

SECTION 4. This Act shall take effect upon its approval.

In accordance with Section 3 of said law, the creation of the Municipality of Isabel was formalized by President Manuel Roxas on January 15, 1948, through Presidential Proclamation No. 49.[3]

At about the same time, the boundary between Isabel and Merida was delineated. To mark the boundary line, the governments of both municipalities placed stone monuments at designated areas along the line. According to Merida, these monuments had dimensions of six by six inches and had the following markings: "1947," the apparent date of their installation; "M", for Merida, placed on one side of the monuments; and "I", for Isabel, placed on the other side.[4]

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[3] Accessed 1 September 2020 at https://www.officialgazette.gov.ph/downloads/1948/01jan/19480108-PROC-0049-ROXAS.pdf.

[4] *Rollo,* p. 16.

The present controversy pertains to two of these monuments which were placed along a dead creek named Doldol: one that was placed shoreward thirty meters from the highway, which was lost after the lapse of time, and another one that was placed near an ancient *doldol*[5] tree.[6] Merida claims that when the Isabel local government unit (LGU) installed new boundary monuments in 1981, the latter failed to find the monument by the old *doldol* tree, and instead placed a new monument along the Benabaye River, which was marked as Municipal Boundary Monument (MBM) No. 5.[7] The placement of MBM No. 5 changed the boundary line and created a disputed area of 162.3603 hectares which is now claimed by both Merida and Isabel.[8]

The dispute was further aggravated by the erection of structures within the disputed area by entities from Isabel, such as a welcome monument installed across the highway from MBM No. 5 by the Yellow Ladies of Isabel in 1988; and a waiting shed built by *barangay* Apale, Isabel. The Isabel LGU likewise exercised jurisdiction over the disputed area by conducting highway clearing activities therein,[9] prompting the barangay council of the adjoining *barangay* Benabaye, Merida, to seek the assistance of the *Sangguniang Bayan* of Merida.[10]

Acting on the requests of *barangay* Benabaye, then Mayor Bernardino Solana organized a fact-finding committee[11] (the Merida boundary committee) to look for the boundary

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[5] More commonly known as *kapok*; scientific name *Ceiba pentandra (L.).*

[6] *Rollo,* p. 16.

[7] Id. at 16, 45.

[8] Id. at 13.

[9] Id. at 198.

[10] Id. Resolution No. 62, s. 1996 of Barangay Benabaye, Merida, Leyte.

[11] Id. at 184. The committee was headed by then Vice Mayor Silvestra M. Maradan, and was made up mostly of municipal officials and officials of Barangay Benabaye.

monuments that were placed when Isabel was created.[12] The Merida committee submitted a report of its findings to the Office of the Mayor.[13] On April 6, 1990, the *Sangguniang Bayan* of Merida adopted the findings of the Merida boundary committee and resolved to construct new boundary monuments in place of the lost ones.[14] On the other hand, Isabel conducted its own investigation and maintained that MBM No. 5 and the other monuments it installed were accurate and legitimate, based on affidavits of the area's residents, tax declarations, and cadastral maps.[15]

In separate resolutions,[16] the municipal councils of Merida and Isabel agreed to submit the boundary dispute to the *Sangguniang Panlalawigan* of Leyte.[17]

Ruling of the *Sangguniang Panlalawigan*

The *Sangguniang Panlalawigan* of Leyte unanimously adopted the findings of its Committee on Boundary Disputes and adjudicated the boundary dispute in favor of Merida. The dispositive portion of its resolution[18] reads as follows:

WHEREFORE, PREMISES CONSIDERED, Municipal Resolution 2004-091 of the Municipality of Isabel and Municipal Resolution No. 96-183 of the Municipality of Merida are hereby resolved as follows:

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[12] Id. at 42.

[13] Id.

[14] Id.

[15] Id. at 43.

[16] Id. at 43-44. Resolution No. 96-183 of the Sangguniang Bayan of Merida, passed on December 4, 1996, Id. 202; and Resolution No. 2004-091 of the Sangguniang Bayan of Isabel, passed on August 2, 2004.

[17] Id. at 43.

[18] Id. at 50; signed by Board Members Florante M. Cayunda (Chairperson of the Committee on Boundary Disputes), Evangeline L. Esperas, Simeon O. Ongbit, Jr., and Rolando C. Piamonte, Sr. Board Members Antonio C. Jabilles (Vice-Chairperson) and Debora G. Bertulfo inhibited, while Board Member Carlo P. Loreto did not sign. The Resolution was attested by Vice-Governor Ma. Mimietta S. Bagulaya and approved by Governor Carlos Jericho L. Petilla.

1. The true and accurate boundary between the Municipalities of Merida and Isabel is the one planted along the dead Doldol creek near the Doldol tree and the highway;

2. The local government of Isabel, Leyte is hereby ordered to remove the Municipal Boundary Monument (MBM) No. 5 installed by former Mayor Cruz Centino of the Municipality of Isabel sometime in 1981 as well as Welcome Boundary Marker constructed by the Yellow Ladies Club of Isabel, Leyte sometime in 1988.

3. The local government of Merida, Leyte, is hereby ordered to install another Municipal Boundary Monument along the dead Doldol creek near the Doldol tree and the highway in accordance with the laws and the Barangay Boundary and Index Maps and political boundary maps of the two(2) [sic] municipalities.

SO ORDERED.[19]

The *Sangguniang Panlalawigan* explained that the specific enumeration in R.A. No. 191 of the eight barrios which comprise Isabel does not include *barangay* Benabaye, which is a part of Merida. Consequently, the provincial board refused to consider the tax declarations presented by Isabel which list the location of some properties within the disputed area as being within "Benabaye, Isabel, Leyte."[20] Furthermore, even the barangay boundary and index maps of the Isabel Cadastre show that the said properties are actually located in Benabaye, Merida.[21]

The Leyte provincial board also gave more credence to Merida's assertion that the true boundary is demarcated by the monument placed shoreward along the highway and the dead Doldol Creek, as this was supported not only by the committee reports submitted by Merida but also by positive testimonies of witnesses, including Isabel's first mayor, Galicano Ruiz, and by the monument located near the ancient *doldol* tree along Doldol Creek.[22]

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[19] Id. at 49-50.

[20] Id. at 46.

[21] Id.

[22] Id. at 47.

Dissatisfied, Isabel appealed from the resolution of the *Sangguniang Panlalawigan*, pursuant to Section 119 of the Local Government Code.[23]

Ruling of the RTC

In a Decision dated September 29, 2009,[24] the trial court ruled in favor of Isabel and reversed the *Sangguniang Panlalawigan* Resolution, *viz.*:

> WHEREFORE, premises considered, judgment is hereby rendered, in favor of appellant and against appellee, REVERSING and SETTING ASIDE the assailed Resolution of the Honorable Sangguniang Panlalawigan ng Leyte and a new one is hereby entered, DECLARING that the contested tract of land of 162.3603 hectares as appearing in the cadastral survey records of Cad 661-D properly belong to the Municipality of Isabel, Leyte.
>
> Upon the finality of this decision, the appellee is hereby further ordered to immediately remove the billboard it erected during the pendency of the appeal at its expense.
>
> SO ORDERED.[25]

In so ruling, the RTC held that the true boundary between *barangay* Apale, Isabel, and *barangay* Benabaye, Merida, is the Benabaye River. The trial court gave more weight to the testimonies of three witnesses presented by Isabel who all testified that the true boundary between Apale and Benabaye was the "brook/creek located near the poblacion of *barangay* Benabaye."[26] According to the trial court, the witnesses presented by Isabel were "*very old men nearing the end of their lives x x x who are not expected to lie or concoct tales.*"[27] Moreover, the presiding judge himself conducted an ocular inspection of Benabaye River and was able to see MBM No. 5 which was installed by the

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[23] Id. at 48.

[24] Id. at 51-68; penned by Acting Presiding Judge Lauro A.P. Castillo, Jr.

[25] Id. at 68.

[26] Id. at 64.

[27] Id. at 65.

Isabel LGU, which to him appeared to have been installed *"many, many years ago"* and was compliant with the standards set by the Manual for Land Surveys in the Philippines.[28] The testimonies of Isabel's witnesses were likewise corroborated by the *Barangay* Boundary and Index Map which was duly approved on December 11, 1987, by the Regional Director of the Land Management Service of the Department of Environment and Natural Resources. On the contrary, the trial court concluded that the statements of Merida's witnesses were either hearsay or self-serving. Likewise, the trial court did not consider the tax declarations submitted by both parties because the tax declarations all referred to incidents after 1948, and were therefore not determinative of conditions obtaining during the creation of Isabel.[29]

Merida filed a motion for new trial dated October 27, 2009,[30] on the ground that the trial court failed to consider the existence of the 1947 monument near the ancient *doldol* tree. Merida argues that the monument could not have been inspected by the trial court because the same was unearthed only after the trial court had rendered its decision. Merida likewise offered sworn statements of the persons who located and unearthed the said monument,[31] along with photographs thereof.[32]

The RTC denied Merida's motion for new trial in an Omnibus Order dated July 5, 2010.[33] According to the trial court, the recent unearthing of the monument near the ancient *doldol* tree did not place such monument under the ambit of newly discovered evidence, since photographs of the monument already formed part of the evidence considered by the *Sangguniang*

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[28] Id.

[29] Id. at 65-66.

[30] Id. at 118-128.

[31] Id. at 123.

[32] Id. at 124-126, 216-218, 220.

[33] Id. at 112-117.

Panlalawigan and the trial court.[34] The trial court also stated that the remedy of new trial was not available because it was trying the case under its appellate jurisdiction, and thus it may only remand the case to the *Sangguniang Panlalawigan*.[35]

Ruling of the CA

On appeal by Merida, the CA reversed the RTC Decision and reinstated the *Sangguniang Panlalawigan* Resolution. On the issue of the proper mode of review, the CA held that Merida correctly availed of an appeal *via* Rule 42, which covers appeals from decisions of the RTCs in the exercise of their appellate jurisdiction.

The CA gave little probative value to the tax declarations of properties within the disputed area, on the following grounds: (1) an LGU must first prove territorial jurisdiction in order to collect realty taxes from a certain property; and (2) Isabel failed to submit a tax declaration history to show that it has exercised taxation powers over the area since its establishment in 1948. The appellate court likewise examined the tax declarations submitted by Isabel, some of which indicate the location of the properties as "Benabaye, Isabel, Leyte."[36] The Court ratiocinated that if these properties were actually under Isabel's jurisdiction, the tax declarations should have indicated Apale as the location of the properties instead of Benabaye, since Isabel claims the disputed area as part of Apale, and Benabaye is undisputedly located in and associated with Merida.[37]

The CA likewise agreed with the assertion that the disputed area is within the territory of Merida because some elective *barangay* officials of its constituent *barangay* Benabaye reside within the disputed area, as the Local Government Code requires

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[34] Id. at 114.

[35] Id. at 115-116.

[36] Id. at 32. CA Decision.

[37] Id. at 32-33.

elective *barangay* officials to be residents and registered voters of the LGU where they intend to serve as such.[38]

In order to determine the true and accurate boundary marker, the CA weighed the evidentiary support for Merida's Doldol Creek monuments as against Isabel's MBM No. 5, *viz.*:

> Merida is adamant that the disputed area is within its territorial jurisdiction. Starting at the level of the *Sangguniang Panlalawigan* of Leyte, it made mention of stone monuments with markings of "1947," to represent the year that Isabel was created and the year it was laid down on the ground; "M", to represent the side for Merida; and "I", to represent the side demarcating the line for Isabel. However, Merida alleged that these 1947 stone monuments cannot be located despite diligent efforts.
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> On the other hand, Isabel claims that the boundary was demarcated by MBM No. 5 and which marker was placed along the Benabaye River, which was also the natural boundary between Barangay Benabaye of Merida and Barangay Apale of Isabel. This MBM No. 5 was given great weight by the RTC, bolstered by the affidavits of septuagenarians (or older) who were knowledgeable about the "true" boundaries between said barangays. In addition, the RTC opined that MBM No. 5 appeared to have been placed many years ago and complied with monument standards for municipal boundary monuments provided under Section 221 of the Manual for Land Surveys in the Philippines.
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> Foremost to consider is the fact that the basis made, by the RTC, that is, the Manual for Land Surveys in the Philippines, is of recent vintage. In fact, if the law creating Municipality of Isabel will be revisited, which law was passed in 1947, its territorial jurisdiction was not delineated by metes and bounds but it merely made mention of the barrios (now known as barangays) that were separated from Merida.
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> Moreover, the 1947 stone monument, while already mentioned by Merida, was not seen during the ocular inspection of the RTC, such that, the trial court did not give probative value to the claim of the *[sic]* Merida that the true demarcating object between Barangays Apale and Benabaye is the 1947 stone monument since it was not

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[38] Id. at 33.

duly seen, rendering such claims hearsay. However, it cannot be gainsaid that this 1947 stone monument exists. Pictures were submitted, including other evidence showing its existence and location, that it really exists and that it was installed when Isabel was created. It is also clear that Isabel did not completely debunk the existence of this 1947 stone monument but merely attacked the alleged public official who installed such marker, casting doubt as to its veracity. However, as between the testimonial evidence (represented by the affidavits of some residents and public officials) of Isabel and its MBM No. 5 and the 1947 stone monument, We are inclined to give greater weight to the latter as the correct boundary between the Barangays of Apale and Benabaye. For one, the 1947 marker was installed during the creation of Isabel and second, it still exists up to this date, albeit was not seen during the ocular inspection conducted by the RTC.

It should be noted that when RA 191 created the Municipality of Isabel, it did so by mentioning the barrios which will comprise said municipality. However, said law did not mention the exact metes and bounds to delineate its territorial jurisdiction. In this case, the *Sangguniang Panlalawigan* correctly determined by available evidence the extent of the territory that was ceded by Merida to form the Municipality of Isabel.[39]

The CA concluded by reiterating that the substantial alteration of LGU boundaries cannot be left to the will of the residents alone, for Article X, Section 10 of the Constitution lays down the requisites thereof; and consequently, in adjudicating boundary disputes, the function of tribunals has become limited to making a factual determination of the actual boundary lines between LGUs, in accordance with the applicable municipal charters.[40]

The Issue

Isabel moved for reconsideration, which the CA denied in the assailed November 17, 2014 resolution; hence this petition, which raises the sole issue of whether or not the CA erred in reinstating the *Sangguniang Panlalawigan* resolution in favor

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[39] Id. at 34-35. Citations omitted.

[40] Id. at 35-36, citing *Municipality of Sogod v. Judge Rosal*, 278 Phil. 642 (1991).

of Merida.[41] Isabel argues that: 1) the existence of the monument near the ancient *doldol* tree, upon which the CA decision hinged, was never proven, as it was never inspected by the courts; and 2) the preponderance of evidence shows that the disputed portion is actually part of *barangay* Apale, since the true boundary is demarcated by MBM No. 5.[42]

The Court's Ruling

The petition lacks merit. The appellate court did not err in reinstating the adjudication of the boundary dispute by the *Sangguniang Panlalawigan* of Leyte.

I.

The Constitution regulates *inter alia* the creation, division, merger, and abolition of LGUs, as well as the demarcation of boundaries thereamong. Article X, Section 10 of the basic law requires that substantial alterations in LGU boundaries should be made *"in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."* In the case of municipalities, the criteria are set forth in Sections 6, 10, and 441 of the Local Government Code:

> Section 6. *Authority to Create Local Government Units*. — A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.
>
> Section 10. *Plebiscite Requirement*. — No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by

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[41] Id. at 7-8. Petition for Review.

[42] Id. at 8-9.

the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

Section 441. *Manner of Creation*. — A municipality may be created, divided, merged, abolished, or its boundary substantially altered only by an Act of Congress and subject to the approval by a majority of the votes cast in a plebiscite to be conducted by the COMELEC in the local government unit or units directly affected. Except as may otherwise be provided in the said Act, the plebiscite shall be held within one hundred twenty (120) days from the date of its effectivity.

Consequently, this Court held in the *Municipality of Sogod v. Judge Rosal*[43] that:

The 1987 Constitution now mandates that no province, city, municipality or barangay may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. Hence, any alteration or modification of the boundaries of the municipalities shall only be by a law to be enacted by Congress subject to the approval by a majority of the votes cast in a plebiscite in the barrios affected (Section 134, Local Government Code). Thus, under present laws, the function of the provincial board to fix the municipal boundaries are [sic] now strictly limited to the factual determination of the boundary lines between municipalities, to be specified by natural boundaries or by metes and bounds in accordance with the laws creating said municipalities.[44] (Citations omitted)

Hence, under present laws, the function[45] of tribunals[46] in the adjudication of LGU boundary disputes is limited to the

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[43] Supra note 40.

[44] Id. at 650-651.

[45] In default of an amicable settlement between the disputing LGUs, when the *sanggunian* is required to formally try the case and render a decision. Rule III, Article 17 of the Implementing Rules and Regulations of the Local Government Code. See also *Municipality of Sta. Fe v. Municipality of Aritao*, 560 Phil. 57 (2007).

[46] Original jurisdiction over LGU boundary disputes is vested in the proper *sanggunian*, in accordance with Section 118 of the Local Government Code;

factual determination of the correct boundary line in accordance with the statutes creating the LGUs involved.[47] As applied to the case at bar, such task ultimately involves the determination of the monuments which mark the true and accurate boundary between Merida and Isabel, in accordance with the charters of both municipalities.[48]

II.

Precision in the delineation of local government unit boundaries is of immense importance because these boundaries determine the spatial extent of the powers of local government units. A local government unit can legitimately exercise governmental powers only within its territorial jurisdiction.

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while appellate jurisdiction is vested in the Regional Trial Courts, subject to review on appeal by the Court of Appeals. See 1 Dante B. Gatmaytan, Local Government Law and Jurisprudence 581-587; *Municipality of Bakun, Benguet v. Municipality of Sugpon, Ilocos Sur*, G.R. No. 224335, March 2, 2020; *Municipality of Pateros v. Court of Appeals*, 607 Phil. 104 (2009); *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, 570 Phil. 395 (2008); *Municipality of Sta. Fe v. Municipality of Aritao*, supra.

[47] In accordance with this precisely-defined function, Rule III, Article 17 (c) of the Implementing Rules and Regulations of the Local Government Code requires that a petition for resolution of a boundary dispute include the following evidentiary attachments: (1) Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU; (2) Provincial, city, municipal, or barangay map, as the case may be, duly certified by the LMB; (3) Technical description of the boundaries of the LGUs concerned; (4) Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody; (5) Written declarations or sworn statements of the people residing in the disputed area; and (6) Such other documents or information as may be required by the sanggunian hearing the dispute.

[48] It must be noted that Merida was created during the Spanish administration of the Philippines (see ABOUT MERIDA LEYTE, Municipal Profile, http://www.merida.gov.ph/site/about. Accessed 5 September 2020), and has been recognized as a municipality of Leyte as early as 1903, without reference to any statute creating the municipality. See Act No. 954 (An Act Reducing the Forty-Nine Municipalities of the Province of Leyte to Thirty-Three [enacted October 22, 1903]), Section 1, Nos. 6 & 7.

Outside these geographical bounds, the acts of local government units are *ultra vires*.[49] Likewise, it has been observed that:

> [t]he inhabitants residing within [the territorial] area [of a LGU] are invested with certain municipal liberties, rights and privileges. They are also impressed with certain duties and obligations. x x x
>
> It is thus obvious that every municipal corporation must have its boundaries fixed, definite and certain as to precise location, in order that they may be identified, and that all may know the exact scope or section of territory or geographical division embraced within the corporate limits, and over which the local corporation has jurisdiction.[50]

To aid the duly designated tribunals in the task of boundary dispute resolution, the Implementing Rules and Regulations of the Local Government Code require the submission *inter alia* of the following: a duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU; a provincial, city, municipal, or *barangay* map, as the case may be, duly certified by the Lands Management Bureau; technical description of the boundaries of the LGUs concerned; written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody; and written declarations or sworn statements of the people residing in the disputed area.[51]

In *Barangay Sangalang v. Barangay Maguihan*,[52] this Court held that in the absence of any other evidence, cadastral maps duly approved by the Director of Lands prevail over tax declarations and provincial assessor's certifications stating that the disputed area is under a particular LGU's jurisdiction.[53]

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[49] *Municipality of Pateros v. Court of Appeals*, supra note 46, citing *Mariano, Jr. v. Commission on Elections*, 312 Phil. 259, 267 (1995).

[50] 1 Eugene McQuillin, A Treatise on the Law of Municipal Corporations 585-586 (1911).

[51] Supra note 47.

[52] 623 Phil. 711 (2009).

[53] Id. at 723.

In *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte, et al.*,[54] this Court used the municipal charters as lodestars in the resolution of the boundary dispute. Marcos was created from seven barrios of the Municipality of Dingras, which were all enumerated in the former's municipal charter. However, the same charter, in defining the new municipality's boundaries, gave the "Ilocos Norte-Mt. Province boundary" (later the Ilocos Norte-Apayao boundary) as its eastern boundary. Consequently, Marcos laid claim to a certain area along the Ilocos Norte-Apayao boundary. This prompted Nueva Era, which also borders Apayao, to claim that Marcos encroached on its territorial jurisdiction. In resolving the conflict between the enumeration of the constituent barrios and the enumeration of the boundary lines in the charter of Marcos, this Court made the following pronouncements:

No part of Nueva Era's territory was taken for the creation of Marcos under R.A. No. 3753.

Only the barrios (now *barangays*) of Dingras from which Marcos obtained its territory are named in R.A. No. 3753. To wit:

> SECTION 1. The barrios of Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit in the Municipality of Dingras, Province of Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos, with the following boundaries:

Since only the *barangays* of Dingras are enumerated as Marcos' source of territory, Nueva Era's territory is, therefore, excluded.

Under the maxim *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind.

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[54] Supra note 46.

Had the legislature intended other *barangays* from Nueva Era to become part of Marcos, it could have easily done so by clear and concise language. Where the terms are expressly limited to certain matters, it may not by interpretation or construction be extended to other matters. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

Moreover, since the *barangays* of Nueva Era were not mentioned in the enumeration of barangays out of which the territory of Marcos shall be set, their omission must be held to have been done intentionally. This conclusion finds support in the rule of *casus omissus pro omisso habendus est*, which states that a person, object or thing omitted from an enumeration must be held to have been omitted intentionally.

Furthermore, this conclusion on the intention of the legislature is bolstered by the explanatory note of the bill which paved the way for the creation of Marcos. Said explanatory note mentioned only Dingras as the mother municipality of Marcos.

Where there is ambiguity in a statute, as in this case, courts may resort to the explanatory note to clarify the ambiguity and ascertain the purpose and intent of the statute.

Despite the omission of Nueva Era as a mother territory in the law creating Marcos, the latter still contends that said law included Nueva Era. It alleges that based on the description of its boundaries, a portion of Nueva Era is within its territory.

The boundaries of Marcos under R.A. No. 3753 read:

On the Northwest, by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; on the East, by the Ilocos Norte-Mt. Province boundary; on the South, by the Padsan River which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest, by the boundary between the municipalities of Batac and Dingras.

Marcos contends that since it is "bounded on the East, by the Ilocos Norte-Mt. Province boundary," a portion of Nueva Era formed part of its territory because, according to it, Nueva Era is between the Marcos and Ilocos Norte-Mt. Province boundary. Marcos posits that in order for its eastern side to reach the Ilocos Norte-Mt. Province

boundary, it will necessarily traverse the middle portion of Nueva Era.

Marcos further claims that it is entitled not only to the middle portion of Nueva Era but also to its northern portion which, as a consequence, was isolated from the major part of Nueva Era.

We cannot accept the contentions of Marcos.

Only Dingras is specifically named by law as source territory of Marcos. Hence, the said description of boundaries of Marcos is descriptive only of the listed *barangays* of Dingras as a compact and contiguous territory.

Considering that the description of the eastern boundary of Marcos under R.A. No. 3753 is ambiguous, the same must be interpreted in light of the legislative intent.

The law must be given a reasonable interpretation, to preclude absurdity in its application. We thus uphold the legislative intent to create Marcos out of the territory of Dingras only.[55] (Citations omitted)

The earlier case of *Municipality of Jimenez v. Hon. Baz, Jr.*,[56] likewise upheld the primacy of the municipal charter in the resolution of boundary disputes, *viz.*:

As held in *Pelaez v. Auditor General*, the power of provincial boards to settle boundary disputes is "of an administrative nature — involving as it does, the adoption of means and ways to carry into effect the law creating said municipalities." It is a power "to fix common boundary, in order to avoid or settle conflicts of jurisdiction between adjoining municipalities." It is thus limited to implementing the law creating a municipality. It is obvious that any alteration of boundaries that is not in accordance with the law creating a municipality is not the carrying into effect of that law but its amendment. If, therefore, Resolution No. 77 of the Provincial Board of Misamis Occidental is contrary to the technical description of the territory of Sinacaban, it cannot be used by Jimenez as basis for opposing the claim of Sinacaban.[57]

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[55] *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, supra note 46 at 416-419.

[56] 333 Phil. 1 (1996).

[57] Id. at 18-19.

The foregoing jurisprudence clearly illustrates that in boundary dispute adjudication, tribunals must weigh and interpret the evidence presented in a manner which gives full effect to, and is most consistent with, the statute or statutes creating the LGUs involved in the dispute.

III.

Upon a thorough consideration of the parties' arguments and evidence, viewed in the light of the foregoing laws and jurisprudence, this Court is convinced that the adjudication of the Leyte provincial board is more congruent and consistent with the territorial delimitation set forth in R.A. No. 191. The true and accurate boundary line between Isabel and Merida is the line demarcated by the old shoreward monument and the monument along the old Doldol Creek near the ancient *doldol* tree.

American authorities on municipal corporation law have stated that in the determination of LGU boundaries, "due weight should be given to the contemporaneous interpretation of the courts and other lawful authorities and by the population at large residing therein.[58] Maps published by authority of law may [also] be referred to as evidence."[59]

In the case at bar, the Merida boundary committee was able to obtain statements from Isabel's first municipal mayor, Galicano N. Ruiz, as interspersed with the committee's parenthetical comments, *viz.*:

-Question from the [fact-finding] Team Leader:

Nia kami dinhi sa pagconsulta kanimo Mayor bahin sa tino-od nga otlanan kon boundary between Merida and Isabel. Diin ba gayod Mayor ang dapit?

-Answer of Ex-Mayor Galicano N. Ruiz:

Tua sa daplin sa sapa (dead creek) paingon sa doldol (leading to the old, wild and giant doldol, which is still existing up to the present,

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[58] 1 McQuillin, Municipal Corporations, supra note 50 at 589.

[59] Id.

about two kilometers from said boundary monument. Ang mga saksi sa paglubong sa monument (sixth-inch size concrete boundary marker) sila anhing consejal Menong Mercadal sa Merida ug si Consejal Abraham sa Matlang, Isabel pulos mga sakop kani-adto sa Consejo Municipal sa Merida nga gipangolohan ni anhing mayor Leodegario Conciliado (incumbency-first Municipal Mayor of Merida after World War II).

Nahisakop sa otlanan sa sitio Benabaye og Barrio Apale.

-Vice Mayor (Team Leader):

Pero Mayor dili na sitio and [sic] Benabaye nga karon osa ka Barangay sakop sa Merida.

-Mr. Gaudioso G. Tangpuz, MGOO/LGO-V, DLC, Merida:

Paminawi lang ninyo ang pulong niya (meaning the Ex-Mayor and Founding Patriarch of Isabel, Galicano N. Ruiz). Nagsulti siya og Barrio Apale or sitio Benabaye, please record (hinting to the ABC President Paciano A. Travero). At this point the Ex-Mayor was hinting that a certain portion belonged to Barrio Apale). I-record lang ang iyang mga pulong (Og dinhe gitolonan ang ABC President Paciano A. Travero (osa ke miembro sa advance consultation team) ug papel sa team leader aron sa pagsulat, labinga bahin sa tinood nga location site sa concrete Municipal Boundary Marker gilubong kani-adto ubos sa mando kon ka-oyonan sa kadagko-an opisyal sa Merida og Isabel, diin ang Ex-Mayor Galicano N. Ruiz osa sa mga saksi.

Diha sa nabisulat sa on the spot/consultative diagram nga gihimo mismo atubangan sa Ex-Mayor og consultation team based on the verbal testimony of the Ex-Mayor Galicano N. Ruiz:

> "From Isabel going to Merida, there is the first creek of sitio Benabaye, on the right side of the road across the creek at the side of sitio Benabaye, the four sided six-inch concrete monument was erected with an engraved letter "M'' facing the municipality of Merida and "I" facing the side of the municipality of Isabel, about 30 meters, more or less, from the road bordering the shoreline Mangroves, on the lot now owned by Ex-Barrio Lieutenant of Barrio Apale Serafin Urbano."
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> x x x x

-Question from SB Floor Leader Agripino G. Gica:

Puede ba imo kami to-oran didto sa lugar diin nabimutang ang tinuod nga boundary marker? Kon mabimo, ubanan ka namo sa pagtultol sa maong dapit.

-Answer of Ex-Mayor Galicano N. Ruiz

Dili kana mabimo nako, gawas pa angay ko pasabton una si Loloy (incumbent Mayor Priscilo B. Martin of Isabel) og dili ako mahimo nga "mag-trier" sa akong lungsod. Butang kana sa lungsod og ako osa ka opisyal kaniadto sa Isabel. Hain mayo kon moadto kita kang Loloy karon. What I say might not be binding to them (the local officials of Isabel). Dugang tubag sa Vice Mayor Silvestra M. Maradan ug SB Floor leader Agripino G. Gica:

-Dili pa karon dayon, diha na kon masusisi namo ang boundary, sumala sa imong pulong. Ikaw ang among tuyo, agig courtesy call og consultation bahin sa pakisusi sa tino-od nga boundary sa Merida ug Isabel, kamo ikaw ang first appointed Mayor of Isabel when it was separated from Merida in 1948.[60]

As weighed against the statements of residents and municipal employees who lived in the disputed area contemporaneously with the establishment of Isabel which were given credence by the trial court, the testimony of Mayor Ruiz must be given greater weight. Not only was he able to state the location and the circumstances of the installation of the *doldol* monument, his official position as the first mayor of Isabel and manifest apprehension in binding the incumbent officials of Isabel to his statement bolsters the accuracy and reliability of his testimony. Furthermore, Isabel offered no credible rebuttal of Mayor Ruiz's testimony. As regards the maps submitted in evidence, suffice it to state that both the *Sangguniang Panlalawigan* and the RTC cited them in their respective decisions, casting doubt as to their persuasiveness and weight in evidence.

As regards the relative accuracy and genuineness of Isabel's MBM No. 5 as opposed to the *doldol* monument and the lost shoreward monument along Doldol Creek, the CA correctly disregarded Isabel's MBM No. 5 for being based on surveying regulations which are not contemporaneous with the foundation of Isabel. Chapter V, Sections 349, 350, and 355 of the 1947 Manual of Instructions for the Survey of the Public Lands issued

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[60] *Rollo,* pp. 185-186.

by the United States Bureau of Lands, which was released only two (2) months[61] after the enactment of R.A. No. 191, provide:

349. The terms "corner" and "monument" are used largely in the same sense, though a distinction should be noted to clarify the subject matter of this chapter. The term "corner" is employed to denote a point determined by the surveying process, whereas the "monument" is the physical structure erected for the purpose of marking the corner point upon the earth's surface.

x x x x

The "monuments" of the public land surveys range from the deposit of some durable memorial, a marked wooden stake or post, a marked tablet set in solid rock or in a concrete block, a marked tree, a rock in place marked with a cross (X) at the exact point of the corner, and other special types of markers, some of which are more substantial; any of these are termed "monuments." The several classes of accessories such as bearing trees, bearing objects, mounds of stone, and pits dug in the sod or soil, are aids in the finding and identification, and afford evidence for the perpetuation of the corner position.

The restoration of a lost or obliterated corner has to do with the replacing of a monument that has disappeared so far as this relates to physical evidence, or other means of identification short of a remeasurement of the lines that were surveyed in the establishment of this and the nearest existent corners of that survey in the two or four directions. If there should be acceptable collateral evidence by which the original position may be accurately located, the monument may be regarded as obliterated, but not lost; the point is then referred to as an obliterated corner.

x x x x

350. The rules for the restoration of lost corners are not to be applied until after the development of all evidence, both original and collateral, that may be found acceptable, though the methods of proportionate measurement will aid materially in the recovery of the evidence, and will indicate what the resulting locations may be as based upon the known control.

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[61] The Manual was released on August 5, 1947. Bureau of Land Management, Manual of Instructions for the Survey of the Public Lands of the United States III (1947). Accessed 5 September 2020 at https://www.blm.gov/az/surveys/Library/1947-Manual_searchable.pdf.

An existent corner is one whose position can be identified by verifying the evidence of the monument, or its accessories, by reference to the description that is contained in the field notes, or where the point can be located by an acceptable supplemental survey record, some physical evidence, or testimony.

Even though its physical existence may have entirely disappeared, a corner will not be regarded as lost if its position can be recovered through the testimony of one or more witnesses who have a dependable knowledge of the original location.

x x x x

355. An obliterated corner is one at whose point there are no remaining traces of the monument, or its accessories, but whose location has been perpetuated or the point for which may be recovered beyond reasonable doubt by the acts and testimony of the interested landowners, competent surveyors, other qualified local authorities, or witnesses, or by some acceptable record evidence.

A position that depends upon the use of collateral evidence can be accepted only as duly supported, generally through proper relation to known corners, and agreement with the field notes regarding distances to natural objects. stream crossings, line trees, and off-line tree blazes, etc., or unquestionable testimony.

A corner will not be considered as lost if its position can be recovered satisfactorily by means of the testimony and acts of witnesses having positive knowledge of the precise location of the original monument. The expert testimony of surveyors who may have identified the original monument prior to its destruction and thereupon recorded new accessories or connections, etc., is by far the most reliable, though landowners are able to furnish valuable testimony.

x x x x[62]

Applying the foregoing guidelines to the case at bar, it becomes clear that the corner marked by the *doldol* monument cannot be considered lost. During the interregnum when the monument cannot be found, the corner it marks can still be considered extant, as Merida was able to proffer sufficient evidence for its location and eventual recovery. At the very least it can only

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[62] Id. at 282-285. Italics in the original.

be considered an obliterated corner; but, in fact, Merida was able to find the lost monument, as evidenced by the photographic and testimonial evidence it submitted to support its motion for new trial.[63] These pieces of evidence, taken together with Mayor Ruiz's testimony as to its location and installation, and Isabel's failure to adduce evidence to the contrary[64] sufficiently establish the existence of the *doldol* monument.

Regarding Isabel's claim that the disputed area is actually sitio Benabaye of its *barangay* Apale, per the tax declarations and testimonies of its residents, it has been established that *barangay* Benabaye was formerly a *sitio* of *barangay* Calunangan, Merida.[65] If the disputed area was indeed a mere *sitio* of Apale as claimed by Isabel, this should have been indicated in the tax declarations from the area. However, as found by the CA, some of the tax declarations submitted by Isabel merely state the location of the properties as "Benabaye, Isabel, Leyte," presumably to the effect that Benabaye is a *barangay* of Isabel, when in fact Benabaye is a *barangay* which was *carved out of another barangay* that is indisputably part of Merida.

Furthermore, as correctly pointed out by the CA, the fact that some of *barangay* Benabaye's elective officials[66] reside in the disputed area bolsters Merida's claim thereto, for the Local Government Code[67] requires barangay elective officials to be residents and registered voters of the *barangays* they wish to serve in. Indeed, if the disputed area were part of Apale, Isabel, these persons should have run for elected office there, and not in Benabaye; likewise, if these persons had run for

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[63] Joint Affidavit of Berlito L. Sanchez and Venerando L. Gumba, *rollo*, p. 123; Labelled photographs, id. at 124-126, 216-218, 220.

[64] As found by the CA. Id. at 35.

[65] RTC Decision, id. at 63; Petition of Isabel with the RTC, id. at 150.

[66] According to Merida, the residential houses of the Punong Barangay, two (2) kagawads, the Sangguniang Kabataang Chairperson, and some barangay tanods of Barangay Benabaye were located in the disputed area. Id. at 74.

[67] REPUBLIC ACT NO. 7160, Section 39.

office in Benabaye, the legitimate residents of that barangay could have contested the qualification of these persons to serve as elected officials of Benabaye.

At any rate, both Isabel and Merida agree that the disputed area belongs to a locality known to its inhabitants as Benabaye, regardless of whether it is a sitio or a barangay.[68] As discussed earlier, the evidence adduced by both parties preponderantly demonstrates that the locality of Benabaye is a part of Merida; and R.A. No. 191 does not include Benabaye in the enumeration of the barangays that make up Isabel. There is no indication whatsoever in the records that the locality of Benabaye was divided between Isabel and Merida. Hence, following the ruling in *Municipality of Nueva Era*, this Court must construe R.A. No. 191 to mean that the legislature deliberately excluded Benabaye and, consequently, the disputed area, from the territorial jurisdiction of the Municipality of Isabel. Consequently, the boundary line which more accurately reflects this intention of the legislature is that which is marked by the lost shoreward monument and the monument near the ancient *doldol* tree, both installed along the old Doldol Creek in 1947.

IN VIEW OF THE FOREGOING PREMISES, the present petition is **DENIED**. The August 20, 2014 Decision and the November 17, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 05255 are hereby **AFFIRMED**.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Zalameda, JJ.,* concur.

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[68] Petition of Isabel with the RTC, *rollo*, p. 149; Comment to the Petition for Review on *Certiorari* of Merida, id. at 75.

EN BANC

[G.R. No. 218304. December 9, 2020]

NINIA P. LUMAUAN, *Petitioner, v.* **COMMISSION ON AUDIT,** *Respondent.*

APPEARANCES OF COUNSEL

Bong Richard M. Tumaliuan for petitioner.
The Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J.*:

Before the Court is a Petition for *Certiorari*[1] filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the June 4, 2014 Decision[2] and the February 27, 2015 Resolution[3] of respondent Commission on Audit (COA).

Factual Antecedents

Petitioner Ninia P. Lumauan (Lumauan) was the Acting General Manager of Metropolitan Tuguegarao Water District (MTWD),[4] a government-owned and controlled corporation (GOCC) created pursuant to Presidential Decree (PD) No. 198 or the Provincial Water Utilities Act of 1973, as amended by Republic Act (RA) No. 9286.

In 2009, the Board of Directors of MTWD issued Board Resolution Nos. 2009-0053[5] and 2009-0122,[6] approving the

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[1] *Rollo*, pp. 3-7.

[2] Id. at 8-14; penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioner Heidi L. Mendoza.

[3] Id. at 15.

[4] Id. at 8.

[5] Id. at 17-18.

[6] Id. at 19-20.

payment of accrued Cost of Living Allowance (COLA) to qualified MTWD employees for calendar years (CYs) 1992 to 1997 in the aggregate amount of ₱1,689,750.00.[7]

However, after post-audit, Supervising Auditor Floricen T. Unida and Audit Team Leader Basilisa T. Garcia issued Notice of Disallowance No. 10-003-101-(09),[8] disallowing the payment of ₱1,689,750.00 for lack of legal basis specifically since the COLA was already deemed integrated into the basic salary of the employees pursuant to Section 12[9] of RA No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, and the Department of Budget and Management (DBM) Corporate Compensation Circular (CCC) No. 10.[10] Held liable under the Notice of Disallowance were petitioner; Ms. Visitacion M. Rimando (Rimando), Division Manager-Administrative; Ms. Marcela Siddayao (Siddayao), Cashier; and the employees of MTWD, as payees.[11]

Petitioner appealed the disallowance to the COA Regional Director,[12] citing the ruling of the Court in *Philippine Ports*

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[7] Id. at 8.

[8] Id. at 21-22.

[9] SECTION 12. *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

[10] *Rollo*, p. 21.

[11] Id.

[12] Id. at 9.

Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit,[13] where the rights of the PPA employees to claim COLA and amelioration allowance until March 16, 1999 were upheld.

Ruling of the Regional Director

In a November 23, 2011 Decision,[14] Regional Director III Atty. Elwin Gregorio A. Torre denied the appeal for lack of merit. He affirmed the disallowance on the ground that the payment of COLA was prohibited since it was already integrated into the basic salary of the employees.[15]

He opined that after the promulgation of *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, the DBM issued National Budget Circular (NBC) No. 2005-502 dated October 26, 2005, which clarified that "payment of allowances and other benefits, such as COLA, which are already integrated in the basic salary, remains prohibited unless otherwise provided by law or ruled by the Supreme Court."[16] Regarding petitioner's defense of good faith, he found the same bereft of any merit considering that the payment of the said benefit was already prohibited since October 26, 2005.[17]

Unfazed, petitioner elevated the matter to respondent COA-Commission Proper (CP).

In response, the Regional Director filed his Answer alleging that the appeal was filed beyond the prescribed period.[18] He claimed that since petitioner already exhausted the six-month appeal period, she should have filed the Appeal Memorandum

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[13] 506 Phil. 382 (2005).

[14] *Rollo*, pp. 23-27.

[15] Id. at 26.

[16] Id.

[17] Id. at 27.

[18] Id. at 10.

with respondent COA-CP on the same day she received his Decision.[19]

Ruling of the COA-CP

On June 4, 2014, respondent COA-CP rendered a Decision denying the appeal for late filing and lack of merit. Respondent COA-CP agreed with the observation of the Regional Director that the appeal was belatedly filed.[20] It ruled that the disallowance has already become final and executory because petitioner belatedly filed the Appeal Memorandum or 12 days from receipt of the Decision of the Regional Director.[21] Besides, even if the appeal was timely filed, respondent COA-CP ratiocinated that the appeal should still be denied because petitioner's arguments were bereft of any merit.[22]

It reiterated the ruling of the Regional Director that the payment of COLA was prohibited because it was already incorporated in the standardized salary rates of government employees under the general rule of integration.[23] As regards petitioner's defense of good faith, respondent COA-CP found the same unmeritorious considering that under the principle of *solutio indebiti*, all employees of MTWD who received the disallowed COLA were obliged to return the same.[24]

The dispositive portion of the assailed COA-CP Decision reads:

WHEREFORE, the instant appeal is **DENIED** and COA RO No. II Decision (COA-RO2 Case No. 2011-017 dated November 23, 2011) is hereby **AFFIRMED**. Accordingly, ND No. 10-003-101-(09) dated November 22, 2010 on the payment of Cost of Living Allowance to

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[19] Id.

[20] Id.

[21] Id. at 10-11.

[22] Id. at 11.

[23] Id. at 11-12.

[24] Id. at 12-13.

Metropolitan Tuguegarao Water District Employees amounting to ₱1,689,750.00 for calendar years 1992 to 1997 is hereby **SUSTAINED**.[25]

Unfazed, petitioner filed a Motion for Reconsideration which the COA-CP denied in its February 27, 2015 Resolution.[26]

Hence, petitioner filed the instant Petition for *Certiorari* interposing the core issue of whether respondent COA-CP committed grave abuse of discretion in disallowing the payment of COLA for CYs 1992-1997 to the employees of MTWD.[27]

Petitioner's Arguments

Petitioner contends that contrary to the findings of respondent COA-CP, the appeal was timely filed as the Appeal Memorandum was filed on November 25, 2011, the same day the Decision of the Regional Director was received.[28] Also, citing the case of *Metropolitan Waterworks and Sewerage System (MWSS) v. Bautista*,[29] petitioner insists that the payment of COLA should not have been disallowed because the employees of GOCCs, whether incumbent or not, are entitled to COLA from 1989 to 1999 as a matter of right.[30] And even if the payment of COLA was correctly disallowed, petitioner argues that since the disbursement was made in good faith, she cannot be made liable to refund the same.[31]

Respondent's Arguments

In its Comment,[32] respondent did not discuss the timeliness of the appeal. Instead, it focused on the validity of the

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[25] Id. at 13.

[26] Id. at 15.

[27] Id. at 4.

[28] Id. at 4-5.

[29] 572 Phil. 383 (2008).

[30] *Rollo*, p. 5.

[31] Id. at 5-6.

[32] Id. at 54-63.

disallowance. Respondent maintains that the disallowance was proper because it was made pursuant to law and prevailing jurisprudence.[33] Respondent asserts that the Supreme Court has upheld the inclusion of COLA in the standardized salary rates and has resolved that the non-publication of DBM Circular No. 10 did not render ineffective the validity of Section 12 of RA No. 6758.[34]

Respondent further claims that petitioner cannot avail of the defense of good faith because at the time the COLA was given to the employees and the officers of MTWD, DBM Circular No. 10 had already been reissued and published.[35] As a result, respondent posits that petitioner may no longer rely on the ruling in *Metropolitan Waterworks and Sewerage System v. Bautista* as the defect of the DBM Circular had been cured.[36]

The Court's Ruling

The Petition lacks merit.

The Appeal Memorandum was filed on time.

A careful perusal of the annexes attached to the Petition confirms that the Appeal Memorandum was filed on the same day a copy of the Decision of the Regional Director was received. The Registry Receipt[37] attached to petitioner's Appeal Memorandum indicated that petitioner filed the Appeal Memorandum by registered mail on November 25, 2011. In the Appeal Memorandum,[38] petitioner stated that a copy of the Decision of the Regional Director was received on November 25, 2011. Likewise, the stamp of receipt[39] on the

[33] Id. at 58-60.

[34] Id.

[35] Id. at 60-62.

[36] Id. at 61.

[37] Id. at 34.

[38] Id. at 28-34.

[39] Id. at 23.

first page of the Decision of the Regional Director showed that it was received by the Administrative Division of MTWD on November 25, 2011.

Based on the foregoing, the Court finds that the Appeal Memorandum was filed on time because it was filed on November 25, 2011, the same day a copy of the Decision of the Regional Director was received. Thus, there was no reason for respondent COA-CP to deny the appeal for late filing.

The payment of the accrued COLA for CYs 1992 to 1997 was correctly disallowed.

As regards the validity of the disallowance, the Court finds that the grant of accrued COLA for CYs 1992 to 1997 was correctly disallowed.

In *Torcuator v. Commission on Audit*,[40] a case involving the same issue, the Court upheld the disallowance of the payment of COLA because said allowance was deemed already integrated in the compensation of government employees under Section 12 of RA 6758. The Court further declared that said provision was self-executing, and thus the absence of any DBM issuance was immaterial. Quoted below is the discussion of the Court on the matter:

> R.A. No. 6758 standardized the salaries received by government officials and employees. Sec. 12 thereof states:
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> > SECTION 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being

[40] G.R. No. 210631 (Resolution), March 12, 2019.

received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

In *Maritime Industry Authority v. [COA] (MIA)* the Court explained the provision of Sec. 12, to wit:

The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:

1. representation and transportation allowances;

2. clothing and laundry allowances;

3. subsistence allowance of marine officers and crew on board government vessels;

4. subsistence allowance of hospital personnel;

5. hazard pay; and

6. allowances of foreign service personnel stationed abroad.

In addition to the non-integrated allowances specified in Sec. 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.

Pursuant to R.A. No. 6758, DBM-CCC No. 10 was issued, which provided, among others, the discontinuance without qualification of all allowances and fringe benefits, including COLA, of government employees over and above their basic salaries. In 1998, the Court declared in the case of *De Jesus* that DBM-CCC No. 10 is without force and effect on account of its non-publication in the Official Gazette or in a newspaper of general circulation, as required by law. In 1999, DBM re-issued its DBM-CCC No. 10 in its entirety and submitted it for publication in the Official Gazette.

Thus, petitioners chiefly argue that since DBM-CCC No. 10 was invalidated and was re-published only in 1999, then the officers and employees of PWD may receive COLA and other fringe benefits for the period of 1992 to 1999.

The Court is not convinced.

As early as *Philippine International Trading Corporation v. [COA]*, the Court held that the nullification of DBM-CCC No. 10 in *De Jesus* does not affect the validity of R.A. No. 6758, to wit:

> There is no merit in the claim of PITC that R.A. No. 6758, particularly Section 12 thereof is void because DBM-Corporate Compensation Circular No. 10, its implementing rules, was nullified in the case of *De Jesus v. [COA]*, for lack of publication. The basis of COA in disallowing the grant of SFI was Section 12 of R.A. No. 6758 and not DBM-CCC No. 10. Moreover, the nullity of DBM-CCC No. 10, will not affect the validity of R.A. No. 6758. It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute. The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules. x x x

In *NAPOCOR Employees Consolidated Union v. National Power Corporation*, the Court reiterated that while DBM-CCC No. 10 was nullified in *De Jesus*, there is nothing in that decision suggesting or intimating the suspension of the effectivity of R.A. No. 6758 pending the publication of DBM-CCC No. 10 in the Official Gazette.

In *Gutierrez*, the Court definitively ruled that COLA is integrated in the standard salary of government officials and employees under Sec. 12 of R.A. No. 6758, to wit:

> The drawing up of the above list is consistent with Section 12 above. R.A. [No.] 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case, needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated

> exclusions in items (1) to (6) remain exclusive. Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.
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> x x x x
>
> Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or ''the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates. x x x

In *MIA*, the Court emphasized that R.A. No. 6758 deems all allowances and benefits received by government officials and employees as incorporated in the standardized salary, unless excluded by law or an issuance by the DBM. The integration of the benefits and allowances is by legal fiction.

It was also discussed therein that "[o]ther than those specifically enumerated in [Sec.] 12, non-integrated allowances, incentives, or benefits, may still be identified and granted to government employees. This is categorically allowed in [R.A.] No. 6758. This is also in line with the President's power of control over executive departments, bureaus, and offices. These allowances, however, cannot be granted indiscriminately. Otherwise, the purpose and mandate of [R.A.] No. 6758 will be defeated."

More recently, in *Zamboanga City Water District v. [COA] (ZCWD)*, it was declared by the Court that, in accordance with the *MIA* ruling, the COLA and Amelioration Allowance *(AA)* are already deemed integrated in the standardized salary, particularly, in local water districts.

Verily, the Court has consistently held that Sec. 12 of R.A. No. 6758 is valid and self-executory even without the implementing rules of DBM-CCC No. 10. The said provision clearly states that all allowances and benefits received by government officials and employees are deemed integrated in their salaries. As applied in this

case, the COLA, medical, food gift, and rice allowances are deemed integrated in the salaries of the PWD officers and employees. Petitioners could not cite any specific implementing rule, stating that these are non-integrated allowances. Thus, the general rule of integration shall apply.[41] (Citations omitted.)

Petitioner's reliance on the pronouncement of the Court in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, reiterated in *Metropolitan Waterworks and Sewerage System v. Bautista*, that employees of GOCC, whether incumbent or not, are entitled to COLA from 1989 to 1999, is misplaced.

The Court in *Maritime Industry Authority (MIA) v. Commission on Audit*[42] already clarified that the ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit* only distinguished the benefits that may be received by government employees hired before and after the effectivity of RA 6758. In fact, in *Republic v. Judge Cortez*,[43] the Court made it clear that *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit* "only applies if the compensation package of those hired before the effectivity of Republic Act No. 6758 actually decreased; or in case of those hired after, if they received a lesser compensation package as a result of the deduction of COLA."[44] Such is not the situation in the instant case.

In view of the foregoing, the Court finds no grave abuse of discretion on the part of respondent COA-CP in disallowing the payment of accrued COLA for CYs 1992 to 1997 in the aggregate amount of ₱1,689,750.00.

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[41] Id.

[42] 750 Phil. 288, 319 (2015), citing *Napocor Employees Consolidated Union v. National Power Corporation*, 519 Phil. 372 (2006).

[43] 805 Phil. 294 (2017).

[44] Id. at 339.

Petitioner can be held personally liable for the disallowed benefit to the extent of the amount she actually and individually received pursuant to our ruling in Madera v. Commission on Audit.[45]

In *Madera*, We promulgated the following rules on return of disallowed amounts, *viz.*:

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, 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 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. (Emphasis supplied).

It must be stressed at the outset that petitioner Lumauan, as Acting General Manager of MTWD, was not the one who approved the grant of the accrued COLA or certified for its

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

funding availability. It was the Board of Directors of MTWD through Board Resolution Nos. 2009-0053[46] and 2009-0122[47] that approved the payment of the accrued COLA.

Petitioner is only a recipient or a passive payee of the allowance. She thus falls under category 2 (c) of the above-cited rules on return.

Under the rules on return of disallowed amounts as espoused in *Madera*, and applying the civil law principles on *solutio indebiti* and unjust enrichment, **"[r]ecipients — whether approving or certifying officers or mere passive recipients,"** like petitioner Madera in this case, are all "**liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.**"[48] To emphasize, "payees who receive undue payment, **regardless of good faith**, are liable for the return of the amounts they received."[49]

The Court explained the rationale for the rules on return as follows:

> In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates**.
>
> Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipients amounts corresponding to a properly disallowed transaction.

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[46] *Rollo*, pp. 17-18.

[47] Id. at 19-20.

[48] *Madera v. Commission on Audit*, supra note 45.

[49] Id.

Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility of situations which may constitute *bona fide* exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered) negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. x x x[50]

As stated, as an exception to this rule, a payee or recipient may be excused from returning the disallowed amount when he/she has shown that he/she was "actually entitled to what he/[she] received" or "when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant."

We have reviewed the records and found none of the extenuating circumstances to be present.

To recall, the benefit subject in this case is accrued COLA. As pointed out by the COA, petitioner is not entitled to said allowance because it was already incorporated in the standardized salary rates of government employees. Neither was it established that ordering its return would unduly prejudice petitioner. It was also not shown that social justice

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[50] Id.

or humanitarian considerations were extant to the instant case. Thus, there is no justifiable circumstance present that would excuse petitioner from returning the disallowed benefit to the extent of the amount she actually and individually received.

Finally, pursuant to our pronouncement in *Madera*, petitioner should only be held liable to return the disallowed amount corresponding to the amount actually and individually received by her.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The June 4, 2014 Decision and the February 27, 2015 Resolution of the Commission on Audit are **AFFIRMED** with **MODIFICATION** that petitioner Ninia P. Lumauan is **DIRECTED** to **RETURN** the disallowed amount corresponding to the amount she actually and individually received within fifteen (15) days from finality of this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 222655. December 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **EDJEN CAMARIÑO,[*] JOEL TOTO[**] LUMINO, FULDERICO DECDEC LUMINO, DENNIS SENGANE, SABELO[***] SAMONTAO, HONORIO SENTILAN, ARNOLD SENGANE, and LITO SAMONTAO,** *Accused-Appellants*,

FRED SENTILAN, JANJEN LUMINO, DISON TUTO, and JOHN DOES, *At-Large*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

HERNANDO, *J.*:

On appeal is the August 25, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01193-MIN affirming *in toto* the June 13, 2013 Judgment[2] of the Regional Trial Court (RTC) of Manolo Fortich, Bukidnon, Branch 11, in Criminal Case No. 07-02-3234, which found accused-appellants Edjen Camariño (Edjen), Joel Toto Lumino (Joel), Fulderico Decdec Lumino (Fulderico), Honorio Sentilan (Honorio), Arnold

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[*] Also spelled as Camariño in some parts of the records.

[**] Also referred to as Joel in some parts of the records.

[***] Also referred to as Isabelo in some parts of the records.

[1] *Rollo*, pp. 3-17; penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Henri Jean Paul B. Inting and Rafael Antonio M. Santos.

[2] CA *rollo*, pp. 31-40; penned by Judge Jose U. Yamut, Sr.

Sengane (Arnold), Dennis Sengane (Dennis), Sabelo Samontao (Sabelo), and accused Lito Samontao (Lito) guilty beyond reasonable doubt of Murder.

Version of the Prosecution:

The evidence for the prosecution showed that at about 5 o'clock in the morning of August 13, 2006, in Sitio Sanggaya, Talakag, Bukidnon, victim Romeo Lajero (Romeo) went to buy cigarette at the store of Elito Cahilog (Elito). Minutes later, his wife, Lucia Lajero (Lucia), heard gunshots coming from the direction of the nearby plaza. When the firing stopped. Lucia went out to verify the report of Eugenio Cahilog (Eugenio) that her husband had been shot. She proceeded to Elito's store where she saw her husband's body riddled with bullets.[3]

Eugenio recalled that when he stepped out of his house in the early morning of August 13, 2006, he heard successive gunshots coming from the nearby plaza. He then saw about 17 persons armed with armalite rifles, garand carbine and shotguns firing indiscriminately at the direction of Elito's house. He recognized them as Toto, Fulderico, Janjen, Honorio, Fred Sentilan, Sabelo, Lito, Dison Tuto, Arnold, Dennis and Edjen, as they were his neighbors and relatives. When the assailants left, he saw the body of Romeo lying face down near the store of Elito.[4]

Version of the Defense:

Accused-appellants interposed the defense of denial and alibi. Honorio and Fulderico both denied any participation in the killing of Romeo. They claimed that Eugenio implicated them to the crime since they were among the witnesses in the killing of Rogelio Talac (Rogelio) by Eugenio and his men. Honorio claimed that he could not be present at the crime scene since he already transferred to Dagundalahon, Talakag, Bukidnon. For his part, Fulderico narrated that on the day of the incident, he was at Songko, Lapitan, Bukidnon. Isabelo declared that on

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

[4] Id. at 5.

August 13, 2006, he was in Cogon, Cagayan de Oro City, tending to the vegetable store of his in-laws.[5]

Lito claimed that on August 13, 2006, at around 7 o'clock in the morning, he was having coffee with Kagawad Paul Paluhan at the latter's house in Lugsayan, Cosina, Talakag, Bukidnon. He averred that it was physically impossible for him to be at the scene of the crime as it would take about two to three hours walk from his residence to reach it.[6]

Joel alleged that he is a farmer and a resident of Sitio Malantao, Salukot, Talakag, Bukidnon. On the day of the incident, he was visiting his mother who was recuperating at Capitan Juan, Lantapan, Bukidnon. He claimed that Eugenio implicated him to the crime since he caused the latter's arrest for illegal possession of firearm. He also testified that it was physically impossible for him to be at the crime scene.[7]

Meanwhile, Edjen recounted that he was at his farm at Sitio Malantao, Salukot, Talakag, Bukidnon on August 13, 2006. Later in the afternoon, his friend, Chiquito went to his house and invited him to the birthday party of the latter's son at Barangay Salukot. He insisted that he could not have been at Sanggaya at the time of the incident because Sanggaya is very far from Salukot.[8]

On the other hand, Dennis claimed that he and his brother, Arnold, were at Taguanao, Indahag, Cagayan de Oro City, hence they could not have participated in the killing of Romeo.[9]

Ruling of the Regional Trial Court:

Appreciating the qualifying circumstances of treachery and abuse of superior strength, the trial court rendered a judgment

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[5] Id. at 6-8.

[6] Id.

[7] Id. at 7.

[8] Id.

[9] Id. at 7-8.

of conviction on the accused-appellants and sentenced each of them to suffer the penalty of *reclusion perpetua*. The dispositive portion of the RTC Decision reads:

> WHEREFORE IN VIEW OF THE ABOVE, and with treachery and abuse of superior strength with no mitigating circumstance, the court finds the accused 1) Edjen Camariño, 2) Joel Toto/Tuto Lumino, 3) Fulderico Decdec Lumino, 4) Honorio Sentilan, 5) Arnold Sengane, 6) Dennis Sengane, 7) Sabelo Samontao and 8) Lito Samontao guilty beyond reasonable doubt of murder of Romeo Lajero y Dondonay and hereby sentences each of the aforementioned accused to suffer the penalty of imprisonment of reclusion perpetua, which each accused shall serve and continue to serve at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte. Accused are credited of their preventive detention at the PDRC and BJMP of Manolo Fortich, Bukidnon and Lumbia City Jail, Cagayan de Oro City. Furthermore, each of the accused is liable to pay, jointly and severally, the heirs of Romeo Lajero, through Lucia Lajero, the following:
>
> (1) ₱75,000.00 — moral damages and
> (2) ₱50,000.00 — nominal damages
>
> Costs against accused.
>
> No pronouncement on actual damages for lack of/or insufficient evidence.
>
> The cases against 1) Fred Sentilan, 2) Janjen Lumino and 3) Dison Tuto, are archived. Let an alias warrant of arrest issue.
>
> SO ORDERED.[10]

Ruling of the Court of Appeals:

Unswayed by the arguments that Eugenio was a biased witness and that his testimony was incredible, the appellate court affirmed the judgment of conviction of the trial court. The CA ruled that after a judicious review of the testimony of Eugenio, it found no reason to doubt the same. On the contrary, Eugenio clearly and positively identified the appellants, who are his relatives and neighbors, as the perpetrators of the crime.

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[10] Id. at 39-40.

Moreover, there was no ill motive on the part of Eugenio to testify against his relatives. He never wavered during his testimony. The appellate court likewise found as weak the alibis of accused-appellants. The alleged distance of their respective whereabouts vis-à-vis the location of the crime scene was vague. Hence, it cannot be conclusively shown that it was indeed physically impossible for each of them to be at the crime scene at the time it was committed.[11]

The appellate court upheld the finding of the trial court that there was conspiracy among the accused. It likewise appreciated the qualifying circumstances of treachery and abuse of superior strength to have attended the commission of the crime.[12]

Issue

Whether or not accused-appellants are guilty of Murder.

Our Ruling

We find that the guilt of the accused-appellants for the crime of Murder was established beyond reasonable doubt by the prosecution.

The trial court's evaluation and conclusion on the credibility of witnesses are generally accorded great weight and respect, and are binding and conclusive, and at times even accorded finality, especially if affirmed by the appellate court, unless there is a clear showing of arbitrariness or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or mis-appreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to assess their credibility. Indeed, trial judges are in the best position to assess whether the witness is truthful or lying as they have the direct and singular opportunity

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[11] Id. at 3-17.

[12] Id.

to observe the facial expression, gesture and tone of voice of the witness while testifying.[13]

Here, we find no reason to reverse the findings of the trial court as affirmed by the CA. We agree with the following findings:

> Indeed, we have reviewed the relevant portions of the transcripts and have confidently arrived at the conclusion that Eugenio Cahilog positively identified accused-appellants as the perpetrators of the dastardly crime of murder committed on the victim which he categorically and consistently claimed to have personally witnessed. The account of Eugenio Cahilog of the shooting incident is not contrary to normal human experience. It is not impossible for an eyewitness of the crime, like Eugenio Cahilog, to have escaped from the eyes of the perpetrators and the bullets of the latter's firearms. The insinuations of accused-appellants do not diminish the plausibility of Eugenio Cahilog's story, let alone destroy his credibility. x x x
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> x x x x
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> Witness Eugenio Cahilog is related either by consanguinity or affinity to the accused-appellants and has known each of them from birth. We do not see any ill motive on his part in testifying against his own relatives regarding the death of the victim, who was not in any way related to him. In his testimony, he was candid and categorical, straightforward and spontaneous, frank and forthright. He remained unfazed and undamaged by grueling cross-examination. x x x[14]

"The finding of guilt based on the testimony of a lone witness is not uncommon in our jurisprudence. Time and again, We have held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court. Such rulings were, therefore, premised on the fact that the credibility of the sole witness was duly established and observed in court."[15]

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[13] *People v. Balmes*, 786 Phil. 425, 432-433 (2016).

[14] *Rollo*, pp. 10-11.

[15] *Ambagan, Jr. v. People*, 771 Phil. 245, 276 (2015).

It is equally settled that "mere 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."[16] Eugenio offered affirmative testimony in contradiction to accused-appellants who took shelter on denials and alibis. For the defense of alibi to prosper, it must be proved that it was physically impossible for the accused to be present at the scene of the crime at the time of its commission. Here, accused-appellants utterly failed to prove that it was physically impossible for them to be at the crime scene at the time the crime was committed. They relied merely on their bare testimonies which were dubious in the first place. We quote with approval the observation of the trial court:

> The court observes a specific pattern or deliberate attempt by accused to confuse the distance/s and the location of the place of incident in relation to other places. There was a deliberate attempt to obfuscate or camouflage the location and distances of Sanggaya in relation to Baylanan, Lapok, Talakag, Capitan Juan, Lantapan and Baungon (Bukidnon), Taguanao and the City of Cagayan de Oro and Villanueva (Misamis Oriental). Their "vagueness" made their theory of physical impossibility, implausible and hard to believe. Their answer of the distance as "very far" does not prove physical impossibility because of the existence of connecting national and provincial roads (macadam or concrete) in Bukidnon, Cagayan de Oro City and Misamis Oriental.
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> Dr. Aida Generalao, is a Municipal Health Officer of Talakag, Bukidnon for a long time and is considered knowledgeable on the location or places and their distances in Talakag. She is a public officer and considered an "old hand" in Talakag, Bukidnon and an independent and unbiased witness. She testified that Sanggaya is only 50 kilometers from the Poblacion of Talakag and there is an estimated "3 to 4" kilometers in that area which can only be traversed by foot or horse.
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> x x x x

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[16] *People v. Ulanday*, 785 Phil. 663, 680 (2016).

It is public knowledge that the national road or highway from Cagayan de Oro City to Talakag is concrete and cemented: that there is a national road or highway connecting the municipality of Talakag to the Municipality of Lantapan and the City of Malaybalay (Bukidnon) or from Talakag to Kalilangan, Bukidnon; that there is a provincial road from the Crossing, Cagayan de Oro City to Poblacion, Baungon; that the provincial road in those municipalities are either [macadam] or cemented; that the road connecting the Municipality of Talakag to Malaybalay, Bukidnon is combination of macadam and cement. Even the evidence of the accused show that Sanggaya can be reached by foot or motor vehicle or animals in a matter of hours or less than a day. Their cross examination of Lucia show that there is a national road directly connecting Baylanan to Cagayan de Oro City. Dr. Generalao confirms that Sanggaya is about 50 kilometers from Poblacion, Talakag, Bukidnon.

x x x x

The testimony of Dr. Generalao (on the distance of Sanggaya) in relation to the cross examination of Lucia, (national road from Baylanan to Cagayan de Oro City) and the testimony of the accused, debunked their theory of physical impossibility. The existence of a connecting network of national and provincial roads in the municipalities of Talakag, Lantapan and Baungon and the cities of Malaybalay, (Bukidnon) and Cagayan de Oro is a matter of public and judicial knowledge. These roads can be traversed by motor vehicles (both public and private) animals or by foot.[17]

"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."[18]

All the elements of the crime of Murder qualified by treachery were present in this case. Romeo was killed and it was established by the prosecution, through the testimony of eyewitness Eugenio,

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[17] CA *rollo*, pp. 36-38.

[18] *People v. Sabangan*, 723 Phil. 591, 609 (2013).

that accused-appellants killed Romeo when they indiscriminately fired at the houses in the vicinity of the plaza, including Elito's store where Romeo was buying cigarette. Romeo was unarmed and unprepared for the attack. Also, the execution of the crime was without risk on the part of the accused-appellants and there was no doubt that Romeo could not mount a defense for himself. He had no chance to resist or escape.[19]

Both the trial court and the appellate court also correctly appreciated the presence of conspiracy.

> Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of conspiracy is rarely found, for criminals do not write down their lawless plans and plot. The agreement to commit a crime, however, may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of intent. It did not matter x x x who inflicted the mortal wound, as the act of one is the act of all, and each incurred the same criminal liability.[20]

It is very clear that conspiracy, connivance and unity of purpose and intention were present during the execution of the crime. The prosecution was able to prove that at the time of the attack, accused-appellants simultaneously fired their long firearms at the houses in the general direction of the plaza, killing Romeo in consequence. Accused-appellants' collective and individual acts demonstrating the existence of a common design is also evident from the unrebutted testimony of Eugenio that he heard one of the accused-appellants order his companions to retreat, which they all did, upon the arrival of police reinforcement from Magsaysay, Miarayon and Talakag.

Under Article 248 of the Revised Penal Code, as amended, Murder is punishable by *reclusion perpetua* to death. While abuse of superior strength and treachery attended the commission

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[19] See *People v. Camposano*, 785 Phil. 563, 583 (2013).

[20] *People v. Hapa*, 413 Phil. 679, 698-699 (2001).

of the crime thus qualifying the killing to murder, the abuse of superior strength in this particular instance is absorbed in the treachery. Thus, the imposable penalty is *reclusion perpetua* because the killing of Romeo, although qualified by treachery, was not attended by any other aggravating circumstance.

Anent the damages awarded, We find that modification is in order. When death results from the commission of a crime, the heirs of the victim are entitled to the following awards: (*a*) civil indemnity *ex delicto* for the death of the victim without need of evidence other than the commission of the crime; (*b*) actual or compensatory damages to the extent proved, or temperate damages when some pecuniary loss has been suffered but its amount cannot be provided with certainty; (*c*) moral damages; and (*d*) exemplary damages when the crime was committed with one or more aggravating circumstances.

Thus, the award of ₱75,000.00 as moral damages is sustained; in addition, civil indemnity and exemplary damages in the amount of ₱75,000.00 each must also be awarded in line with prevailing jurisprudence.[21] Likewise, in *People v. Jugueta*,[22] temperate damages of ₱50,000.00 in lieu of actual damages should further be granted to the heirs of Romeo considering that they were presumed to have spent for his interment. The award of ₱50,000.00 as nominal damages is deleted. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Decision until fully paid.

We note that as stated in the letter dated September 16, 2016[23] of PIS Gerardo F. Padilla of the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, Lito has no record of confinement at said penal institution. The Presiding Judge of RTC, Branch 11 of Manolo Fortich, Bukidnon, is therefore directed to report

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[21] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

[22] *Id.*

[23] *Rollo*, p. 41.

to this Court the present whereabouts of Lito and to cause his confinement at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, both within 10 days from notice hereof.

Finally, we received a letter from the Regional Superintendent of Davao Prison and Penal Farm informing the Court of the demise of accused-appellant Sabelo. Pursuant to Article 89 of the RPC, Sabelo's death totally extinguished his criminal liability and renders dismissible the criminal case against him.[24]

WHEREFORE, the instant appeal is **DISMISSED**. The August 25, 2015 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01193-MIN affirming the Judgment of the Regional Trial Court of Manolo Fortich, Bukidnon, Branch 11, in Criminal Case No. 07-02-3234, convicting accused-appellants Edjen Camariño, Joel Toto Lumino, Fulderico Decdec Lumino, Honorio Sentilan, Arnold Sengane, Dennis Sengane, and Sabelo Samontao of the crime of Murder and imposing on each of them the penalty of *reclusion perpetua* is hereby **AFFIRMED WITH FURTHER MODIFICATION** that, in addition to the award of ₱75,000.00 as moral damages, accused-appellants are **ORDERED** to pay the heirs of Romeo Lajero, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages, in lieu of actual damages. The award of ₱50,000.00 as nominal damages is **DELETED**. Interest at the rate of six percent (6%) *per annum* is also imposed on all the amounts awarded, from the date of finality of this Decision until fully paid.

The Presiding Judge of the Regional Trial Court, Branch 11 of Manolo Fortich, Bukidnon, is **DIRECTED** to report to this Court the present whereabouts of accused-appellant Lito Samontao and to cause his confinement at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, both within 10 days from notice hereof.

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[24] See *People v. Maylon*, G.R. No. 240664, June 22, 2020.

Criminal Case No. 07-02-3234 before the Regional Trial Court of Manolo Fortich, Bukidnon, Branch 11, is **DISMISSED** and **DECLARED CLOSED AND TERMINATED** insofar as Sabelo Samontao is concerned in view of his supervening death.

SO ORDERED.

Leonen (*Chairperson*), *Caguioa,*[****] *Delos Santos,* and *Rosario, JJ.*, concur.

[****] Designated as additional member per raffle dated July 15, 2019 vice *J.* Inting who recused for having concurred in the assailed Decision of the Court of Appeals.

FIRST DIVISION

[G.R. No. 222998. December 9, 2020]

ATTY. ALDO P. TURIANO, *Petitioner, v.* **TASK FORCE ABONO, FIELD INVESTIGATION OFFICE (FIO) – OFFICE OF THE OMBUDSMAN, represented by LEONARDO R. NICOLAS, JR.,** *Respondent.*

APPEARANCES OF COUNSEL

Fortun and Santos Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) assailing the Decision[2] dated November 6, 2015 and Resolution[3] dated February 15, 2016 of the Court of Appeals, Sixth Division (CA), in CA-G.R. SP No. 140220. The CA affirmed the Decision dated April 26, 2013 and Order[4] dated August 13, 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-11-0446-G, which found petitioner Atty. Aldo P. Turiano (Turiano) administratively liable for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service.

The Facts of the Case

On February 3, 2004, the Department of Budget and Management issued a Special Allotment Release Order for

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[1] *Rollo*, pp. 11-45.

[2] Id. at 47-68. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[3] Id. at 46.

[4] Id. at 284-295.

₱728,000,000.00, with corresponding Notice of Cash Allocation amounting to ₱291,200,000.00 for the implementation of the Farm Inputs and Farm Implements Program (FIFIP) of the Department of Agriculture (DA).[5] The City of Iriga, Camarines Sur (Iriga City), then received a ₱3,000,000.00 sub-allotment fund.[6]

On April 26, 2004, the Pre-qualification Bids and Awards Committee (PBAC) of Iriga City, chaired by Turiano, held a meeting upon the request of the City Agriculturist Edwin S. Lapuz (Lapuz) for the immediate purchase of fertilizers. Allegedly, most of the farmers did not have enough funds to buy the needed fertilizers thereby causing them losses. The PBAC members, with the exception of Fernando S. Berina, Jr., approved the immediate purchase of the fertilizers on the basis of a Certificate of Emergency Purchase that was supposedly presented by Lapuz.[7]

On the same day, Iriga City purchased, through negotiated sale, 789 liters/bottles of "Young Magic Foliar Fertilizer" from Madarca Trading (Madarca) at ₱3,800.00 per liter/bottle, or for a total of ₱2,998,200.00. The following day, April 27, 2004, the fertilizers were delivered to Iriga City as shown by the Certificate of Acceptance signed by Property Officer Terecita Barce (Barce). Madarca was then paid a total of ₱2,895,678.50 in two installments — ₱1,887,500.00 which was paid on May 3, 2004, and ₱1,008,178.50 which was paid on January 28, 2005.[8]

On April 19, 2011, respondent Task Force Abono of the Field Investigation Office of the Ombudsman filed a complaint[9] charging Turiano, the PBAC members, and other local government officials involved in the procurement of the fertilizers with various criminal and administrative

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[5] Id. at 48.

[6] Id. at 49.

[7] Id.

[8] Id. at 49-50.

[9] Id. at 83-98.

offenses, including: (1) violation of paragraphs (e) and (g), Section 3 of Republic Act (R.A.) No. 3019,[10] in relation to R.A. No. 9184;[11] (2) violation of Section 88 of the Commission on Audit (COA) Circular No. 92-386;[12] and (3) dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service under paragraphs 1, 3, and 20, Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service (URACCS).

The complaint alleged that: (a) the procurement procedure adopted by Iriga City was designed to favor Madarca; (b) Iriga City did not conduct any public bidding or canvassing of price for the said emergency purchase; (c) the purchase request accomplished and approved by the late Mayor Emmanuel R. Alfelor (Alfelor) specified the fertilizer brand to be purchased in violation of R.A. No. 9184; (d) the retail price for "Young Magic Foliar Fertilizer" at the time of the procurement was only ₱125.00 per liter; (e) Iriga City failed to submit the certificate of emergency purchase, invitation to bid, proof of posting, proof of canvass and PBAC resolution of award; (f) Iriga City chose Madarca as its supplier despite its doubtful eligibility; (g) the transaction between Iriga City and Madarca had already transpired even before the latter submitted documents to prove its eligibility; and (h) therein respondents conspired with each other in defrauding the government.[13]

Ruling of the Ombudsman

In a Decision dated April 26, 2013, the Ombudsman found Turiano, Lapuz, and Aida V. Estonido (Estonido), the City Accountant, administratively liable for dishonesty, grave

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[10] ANTI-GRAFT AND CORRUPT PRACTICES ACT, approved on August 17, 1960.

[11] GOVERNMENT PROCUREMENT REFORM ACT, approved on January 10, 2003.

[12] Rules and Regulations on Supply and Property Management in the Local Governments, promulgated on October 20, 1992.

[13] *Rollo*, pp. 50-51.

misconduct, and conduct prejudicial to the best interest of the service, and meted them the penalty of dismissal from service with the corresponding accessory penalties.

The dispositive portion of the Ombudsman Decision reads as follows:

WHEREFORE, finding substantial evidence against Aida V . Estonido, Atty. Aldo Turiano, and Edwin S. Lapuz for the administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, they are hereby meted the penalty of DISMISSAL FROM THE SERVICE, with its accessory penalties.

In the event that the penalty of Dismissal can no longer be enforced due to respondent 's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for one (1) year, payable to the ofTice of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits, or any receivable from his/her office.

It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

The case against respondents Jean A. Bongon, Jessie S. Abonite, Jose B. Cabanes, Amparo M. Olasa, Melchor J. Nacario and Fernando S. Berina, Jr. is DISMISSED.

Pursuant to Section 7, Administrative Order No. 1 7 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Honorable Mayor of the City of Iriga is hereby directed to implement this Decision and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number: **OMB- C-A-11-0446-G**, to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128 Quezon City.

Compliance is respectfully enjoined consistent with Section 15(3) of R.A. No. 6770 (Ombudsman Act of 1989).

SO ORDERED.[14]

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[14] Id. at 51-52.

With respect to Turiano, the Ombudsman held that his knowledge of and participation in the anomalous transaction is evidenced by his signatures in the two *unnumbered* and *undated* Acceptance and Inspection Reports. These documents confirmed that all 789 liters/bottles of "Young Magic Foliar Fertilizer" were delivered to, and accepted by, Iriga City in one instance, despite the indication in Disbursement Voucher No. 100-04-04-1045-B that only 514 liters/bottles of said fertilizer were initially ordered and delivered.[15]

Turiano sought reconsideration of the above Decision by filing a Verified Motion for Reconsideration dated July 14, 2014, and a Supplemental Motion for Reconsideration dated July 22, 2014.[16] Both motions, however, were denied by the Ombudsman in its Order[17] dated August 13, 2014.

In the said Order, the Ombudsman rejected Turiano's arguments that it is his ministerial duty to sign the Acceptance and Inspection Reports and that he should not be faulted if the corresponding disbursement vouchers were erroneous. If at all, as held by the Ombudsman, these only highlighted the illegality of the transaction:

> x x x Assuming arguendo that 789 liters/bottles of fertilizers were in fact delivered and DV No. [100-04-04-]1045-B was wrongly prepared, **he nevertheless signed check No. 257277 dated 30 April 2004, which authorized the release of ₱1,887,500.00 to Madarca Trading as payment for the 514 liters/bottles of Young Magic [Foliar] Fertilizer that were partially delivered as supported by said DV.** If he was acting in good faith, he should have exercised prudence, noted the discrepancy in the details indicated in the Acceptance and Inspection Report and DV No. [1 00-04-04-]1045-B as to the quantity of the delivered fertilizers, and refrained from signing Check No. 257277; but he disregarded such irregularity and signed the check which released the fund to Madarca Trading.[18]

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[15] Id. at 290.

[16] Id. at 285.

[17] Id. at 284-295.

[18] Id. at 291; emphasis in the original.

Aggrieved, Turiano appealed the ruling of the Ombudsman with the CA.

Ruling of the CA

On November 6, 2015, the CA promulgated the assailed Decision,[19] the dispositive portion of which reads:

> **WHEREFORE**, the petition is denied for lack of merit. Accordingly, the Decision dated April 26, 2013 and Order dated August 13, 2014 of the Office of the Ombudsman are **AFFIRMED**.
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> **SO ORDERED.**[20]

According to the CA, Turiano's right to due process was not violated because he was afforded fair and reasonable opportunity to be heard.[21] At any rate, any procedural defect attending the proceedings before the Ombudsman was cured by his filing of motions for reconsideration.[22] The CA also rejected his argument that the Ombudsman acted as an impartial judge. After all, it is the Ombudsman's constitutional and legal mandate to investigate and prosecute, even *motu proprio*, the acts or omissions of public officers and employees which are contrary to law, and to impose corresponding administrative sanctions.[23]

On the substantive issues, the CA concurred with the findings of the Ombudsman that Turiano, together with Lapuz, Estonido and former Mayor Alfelor, conspired in the anomalous procurement of the fertilizers. With respect to Turiano, his participation is shown by his signatures on the *undated* and *unnumbered* Acceptance and Inspection Reports which confirm the complete delivery of the fertilizers despite the fact that Disbursement Voucher No. 100-04-04-1045-8 shows that only

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[19] Supra note 2.

[20] Id. at 67; emphasis in the original.

[21] Id. at 56.

[22] Id. at 55.

[23] Id. at 57-60.

514 liters/bottles were initially delivered.[24] The CA further held that Turiano, as the PBAC Chainnan, had the responsibility of ensuring that the city government abides by the standards set by procurement laws, rules and regulations. Thus, he cannot downplay his role as merely recommendatory, and claim that his acts of affixing his signatures on the pertinent documents were ministerial.[25]

Turiano sought reconsideration of the CA Decision but was denied in a Resolution[26] dated February 15, 2016.

Hence, this Petition.

Turiano, once again, argues that his right to due process was violated because he was not properly informed of the charges against him.[27] Citing *PAGCOR v. CA*[28] (*PAGCOR*), he contends that the violation of his right to due process cannot be cured by his filing of motions for reconsideration.[29] He also reiterates that the Ombudsman, acting as both the complainant-witness and judge in this case, had in effect, already pre-judged him and could not be expected to play the role of an impartial arbiter.[30] The foregoing circumstances, Turiano argues, render the Ombudsman's Decision and Order null and void.[31]

Furthermore, Turiano insists that his signatures on the Acceptance and Inspection Reports and the checks are insufficient proof of his involvement in the supposed conspiracy to defraud the government. He cites *Arias v. Sandiganbayan*[32] (*Arias*) to

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[24] Disbursement Voucher No. 100-04-04-1045-B (Annex K-42) indicates 514 liters of Young Magic Foliar Fertilizer; *see rollo* p. 124.

[25] Id. at 62-65.

[26] Supra note 3.

[27] Id. at 20-31.

[28] G.R. No. 185668, December 13, 2011, 662 SCRA 294.

[29] *Rollo*, pp. 27-28.

[30] Id. at 29-31.

[31] Id. at 31.

[32] G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309.

bolster his argument that he merely relied on the signatures and representations of his subordinates and co-signatories when he affixed his signatures on the said documents. He further argues that the exoneration and/or exclusion of other signatories in the complaint negates the existence of conspiracy.[33] Finally, Turiano maintains that he exercised diligence and prudence in the performance of his duties as PBAC Chairman. He points out that the delivery of and payment for the fertilizers were confirmed by officials from the city government, the DA and the COA, and that the alleged completion of FIFIP in Iriga City is also a testament to the dutiful performance of his functions.[34]

On the other hand, Task Force Abono, as represented by the Office of the Solicitor General (OSG), counters that the Petition should be dismissed outright for raising questions of facts. Nonetheless, the OSG remains firm that there is no reason for the Court to depart from the CA Decision, and that Turiano's right to due process was not violated because he was given the opportunity to seek a reconsideration of the Ombudsman Decision.[35]

In his Reply,[36] Turiano reiterates his arguments and maintains that his Petition must be given due course considering that deprivation of due process is a question of law, and that the factual issues raised in the Petition fall under the exceptions where the Court may entertain questions of facts. Additionally, Turiano bolsters his claim of innocence by referring to the dismissal of Criminal Case No. SB-16-CRM-0460, entitled "*People of the Philippines vs. Aida V. Estonido, et al.*"[37]

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[33] *Rollo*, pp. 31-35.

[34] Id. at 35-38.

[35] Id. at 224-237.

[36] Id. at 264-280.

[37] Id. at 277.

Issues

The parties raised the following issues for resolution of the Court:

1. Whether the Petition should be dismissed in accordance with Section 5, Rule 45 of the Rules of Court, for raising questions of facts;

2. Whether the CA erred in ruling that Turiano was not denied his right to due process;

3. Whether the CA erred in ruling that there is sufficient evidence to establish conspiracy among Turiano, Lapuz, Estonido and former Mayor Alfelor; and

4. Whether the CA erred in ruling that Turiano failed to exercise due diligence and prudence in the performance of his duties as PBAC Chairman.

Ruling of the Court

The Petition is denied.

On the procedural issue of whether the Petition raises questions of facts, the Court finds Task Force Abono's argument as erroneous. Indeed, the Court is not a trier of facts. And in a petition for review on *certiorari* under Rule 45 of the Rules of Court, generally, only questions of law can be raised. A question of law is one that does not call for the examination of the probative value of the evidence presented by any of the litigants, or the truth or falsity of the alleged facts. It concerns with the correct application of law and jurisprudence on the matter.[38] The test to determine whether a question is one of law or of fact is not the appellation given to such question by the party raising the same. Instead, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence,

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[38] *Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 644, 651.

in which case, it is a question of law; otherwise, it is a question of fact.[39]

Here, an examination of the Petition shows that it does not exclusively raise questions of facts. It also challenges the legal conclusions arrived at by the Ombudsman and the court *a quo* with respect to the observance of due process, the finding of conspiracy, and Turiano's exercise of diligence and prudence, in light not only of the established facts, but also of the prevailing law and jurisprudence on these matters. These are questions of law which the Court has jurisdiction to entertain.

The Court shall now resolve the substantive issues.

Turiano's right to due process was not violated

Turiano claims that the administrative complaint here, which allegedly does not conform to Section 11,[40] Rule 3 of the URACCS, deprived him of his right to due process and his right to be informed of the charges against him. According to Turiano, while the complaint charged him in his capacity as PBAC Chairman, the April 26, 2013 Ombudsman Decision found him administratively liable based on his participation as an Inspector, *i.e.*, signing the Acceptance and Inspection Reports. Yet, after seeking reconsideration of the said Decision, the Ombudsman, in its August 13, 2014 Order, cited his participation as City Administrator, *i.e.*, signing of the checks used as payment to Madarca, as another basis to hold him administratively liable.

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[39] *Office of the Ombudsman v. De Villa*, G.R. No. 208341, June 17, 2015, 759 SCRA 289, 300.

[40] Section 11. Requisites of a Valid Complaint. x x x

The complaint shall be written in a clear, simple and concise language and in a systematic manner as to apprise the person complained of, of the nature and cause of the accusation and to enable the person complained of to intelligently prepare a defense or answer/comment. Should there be more than one person complained of, the complainant is required to submit additional copies corresponding to the number of persons complained of. x x x x

It bears emphasis, however, that the proceedings before the Ombudsman are governed by the Rules of Procedure of the Office of the Ombudsman[41] (Ombudsman Rules), and not by the URACCS. Under Section 3, Rule III of the Ombudsman Rules, an administrative case may be initiated in the following manner —

> Section 3. How initiated. — An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. Such complaint shall be accompanied by a Certificate of Non-Forum Shopping duly subscribed and sworn to by the complainant or his counsel. An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance.[42]

The complaint filed by Task Force Abono satisfies the foregoing since it is written, under oath, and accompanied by evidence in support of the allegations. Moreover, in conformity with the procedure prescribed under the Ombudsman Rules, Turiano was furnished a copy of the complaint together with the annexes, which included copies of the Acceptance and Inspection Reports and Check No. 257277.[43] Thereafter, he filed, with his co-respondents, a Verified Joint Counter-Affidavit, and then a Verified Position Paper. Furthermore, it is undisputed that Turiano "actively participated in the entire course of the investigation and hearings conducted by [the Ombudsman], through the Special Panel on Task Force Abono Cases."[44] Thus, he cannot claim that he is unaware as to what he was accused of.

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[41] Ombudsman Administrative Order No. 07 approved on April 10, 1990.

[42] < Administrative Order No. 07.pdf (ombudsman.gov.ph) > visited last December 7, 2020.

[43] Id.

[44] *Rollo*, p. 55; underscoring supplied.

More importantly, the right to be informed of the charges is a constitutional right afforded to an accused in a criminal proceeding, and not to a respondent in an administrative proceeding where it is only required that the latter be given the opportunity to be heard.[45]

Relevantly, the Court, in *PAGCOR v. Marquez*,[46] held that an administrative charge need not be drafted with the precision of an information in a criminal prosecution. In the earlier case of *Dadubo v. Civil Service Commission*,[47] the Court similarly ruled that the stringent requirements on information in criminal proceedings do not apply in administrative cases, and that the requirements of due process in the latter are satisfied so long as the respondent is given the opportunity to be heard. As held by the Court therein:

> The petitioner's invocation of due process is without merit. Her complaint that she was not sufficiently informed of the charges against her has no basis. While the rules governing judicial trials should be observed as much as possible, their strict observance is not indispensable in administrative cases. As this Court has held, "the standard of due process that must be met in administrative tribunals allows a certain latitude as long as the element of fairness is not ignored."
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> The essence of due process is distilled in the immortal cry of Themistocles to Eurybiades: "Strike, but hear me first!" Less dramatically, it simply connotes an opportunity to be heard. The petitioner had several opportunities to be heard and to present evidence that she was not guilty of embezzlement but only of failure to comply with the tellering procedure. Not only did she testify at her formal investigation but she also filed a motion for reconsideration with the DBP, then appealed to the Merit System Protection Board (MSPB), and later elevated the case to the Civil Service Commission. Having

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[45] *Valera v. Office of the Ombudsman*, G.R. No. 167278. February 27, 2008, 547 SCRA 43, 56-57.

[46] 711 Phil. 385 (2013).

[47] G.R. No. 106498, June 28, 1993, 223 SCRA 748.

been given all these opportunities to be heard, which she fully availed of, she cannot now complain that she was denied due process.[48]

PAGCOR[49] — the case relied upon by Turiano in arguing that his filing of motions for reconsideration cannot cure the violation of his right to due process — finds no application herein. Unlike here, in *PAGCOR*, there was utter disregard of the rules of procedure, including the absence of a valid formal charge and lack of a proper investigation. The filing of a motion for reconsideration simply could not right those wrongs. Hence, the ruling of the Court therein that the motion for reconsideration could not cure the violation of the respondent's right to due process.

The cornerstone of due process in administrative proceedings is the opportunity to be heard. To reiterate, Turiano was given every opportunity to present his side of the case — through his counter-affidavit, position paper, motions for reconsideration, and his participation in the investigation and hearings. Having participated in the proceedings before the Ombudsman extensively, he cannot be permitted to clamor for the nullification of its Decision and Order.

Turiano's invocation of *Cojuangco, Jr. v. Presidential Commission on Good Government*[50] (*PCGG*), to assail the jurisdiction and authority of the Ombudsman to decide the present case, is likewise misplaced. *PCGG* involves a unique set of facts where a subsequent criminal case was filed before the PCGG after the latter had found *prima facie* case against the petitioners therein in an earlier civil complaint. Hence, the observation of the Court that the PCGG cannot be expected to conduct the preliminary investigation in the second case with a cold neutrality of an impartial judge.

On the other hand, the Court agrees and affirms the ruling of the CA that the Ombudsman has the legal and constitutional

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[48] Id. at 753; citations omitted.

[49] Supra note 28.

[50] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

mandate to investigate and prosecute the acts or omissions of public officers or employees that are contrary to law, and to impose corresponding administrative penalties. As aptly held by the CA:

> The above provision [(Section 15 of R.A. No. 6770)] covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty. These powers unmistakably grant the Office of the Ombudsman the power to directly impose administrative sanctions.[51]

Turiano is administratively liable for grave misconduct and conduct prejudicial to the best interest of the service regardless of whether or not he acted in conspiracy with others

On the issue of conspiracy, both the CA and the Ombudsman anchored Turiano's administrative liability on a finding that he conspired with Lapuz, Estonido, and former Mayor Alfelor in defrauding the government:

> x x x Their participation in the acceptance and inspection of the delivered fertilizers, in the release of the fund to Madarca Trading, and in the distribution of the fertilizers to their intended beneficiaries, coupled with their utter lack of regard in signing the documents, prove their knowledge and participation in the conspiracy to defraud the government. x x x For such reasons, they are not guilty of Simple Misconduct, but of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.[52]

On the other hand, Turiano contends that Task Force Abono failed to prove that such conspiracy exists, and that the exoneration

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[51] *Rollo*, pp. 59-60.

[52] Id. at 294.

of and/or absence of charges against the other signatories on the Acceptance and Inspection Reports and the checks negate the existence of conspiracy. He also relies on *Arias* to argue that he should not be faulted for relying on the signatures of those who signed the documents before him.[53]

The Court finds that regardless of the existence of conspiracy among Turiano, Lapuz, Estonido, and former Mayor Alfelor, Turiano is administratively liable on the basis of his own actions. There is substantial evidence to hold Turiano guilty of **grave misconduct and conduct prejudicial to the best interest of the service.**

Misconduct has been defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. To amount to grave misconduct the elements of corruption, flagrant disregard of an established rule, or willful intent to violate the law must be proved by substantial evidence; otherwise, the misconduct is only simple.[54] Meanwhile, flagrant disregard of an established rule has been demonstrated in cases were the respondent's propensity to ignore the rules is clearly manifested by his or her actions –

> Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions**.[55]

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[53] Id. at 31-35.

[54] *Office of the Ombudsman v. Rojas*, G.R. Nos. 209274 & 209296-97, July 24, 2019, 910 SCRA 164, 175.

[55] *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, October 4, 2011, 658 SCRA 498, 507-508; citations omitted and emphasis in the original.

The totality of the facts shows the glaring irregularities in the procurement proceedings undertaken by Iriga City. It was established, among others, that: (l) the fertilizers were purchased through negotiated sale despite the absence of an emergency; (2) the purchase was made immediately after the PBAC meeting; (3) the purchase order indicated the brand of the fertilizers to be procured; (4) most of the documents, including the Acceptance and Inspection Reports, are undated and/or unnumbered; (5) the Acceptance and Inspection Reports state that all 789 liters/ bottles of fertilizers were delivered while Disbursement Voucher No. 100-04-04-1045-B indicates that only 514 liters/bottles of fertilizers were initially delivered by Madarca the following day; and (6) the transaction had already transpired before Madarca submitted the requisite documents showing its eligibility.

Despite all the foregoing, Turiano nevertheless signed the Acceptance and Inspection Reports and checks. He did so in disregard of the pertinent provisions of R.A. No. 9184 and the 2009 Implementing Rules and Regulation (IRR) of R.A. No. 9184.[56]

In addition, his actions also frustrate the functions of the bids and awards committee as delineated under Section 12.1 and 12.2 of the IRR-A of R.A. No. 9184:

Section 12. *Functions of the BAC.*

12.1. The BAC shall have the following functions: advertise and/ or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, resolve motions for reconsideration, recommend award of contracts to the head of the procuring entity or his duly authorized representative: *Provided, however*. That in the event the head of the procuring entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC;

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[56] Implementing Rules and Regulations (IRR) Part A (IRR-A) of R.A. No. 9184, September 23, 2003; the IRR applicable at the time of the subject procurement.

recommend the imposition of sanctions in accordance with Rule XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids and post-qualification. In proper cases, the BAC shall also recommend to the head of the procuring entity the use of Alternative Methods of Procurement as provided for in Rule XVI hereof.

12.2. **The BAC shall be responsible for ensuring that the procuring entity abides by the standards set forth by the Act and this IRR-A**, and it shall prepare a procurement monitoring report that shall be approved and submitted by the head of the procuring entity to the GPPB on a semestral basis. x x x (Emphasis supplied)

Turiano's participation, through his signatures in the Acceptance and Inspection Reports and checks, was crucial to the completion of the transaction. The Acceptance and Inspection Reports were among the documents prepared to support the issuance of the disbursement vouchers, which in turn were prepared to support the issuance of the checks. More importantly, checks that were then consequently issued to Madarca could not have also been effected without Turiano's signature.

Turiano cannot find refuge behind the Court's ruling in *Arias* which involved a criminal prosecution for violation of R.A. No. 3019. In *Arias*, the Court held:

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office *could personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions

can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[57]

It must be emphasized that *Arias* did not license complete reliance on a subordinate's representations. Certain circumstances, such as the apparent incompleteness of the document and the knowledge of irregularities in the underlying transaction, as in this case, warrant more detailed and circumspect examination of the documents. As held by the Court in *Office of the Ombudsman v. Venancio G. Santidad*[58] (*Santidad*), "when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing."[59] Following *Santidad*, Turiano's absolute reliance on his co-signatories and subordinates here is improper and inexcusable.

As to the alleged participation of the COA and the DA in the procurement, this was unsubstantiated, and raised for the first time. This contravenes the rule that "a party is not permitted to change his theory on appeal [, for to] allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process."[60]

All things considered, Turiano's acts of signing the Acceptance and Inspection Reports and checks in light of the circumstances described above show a propensity to ignore established procurement rules, if not a willful disregard of the said rules. For this, he should be held accountable for grave misconduct.

His actions also constitute conduct prejudicial to the best interest of the service. Although there is no exacting definition

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[57] *Arias v. Sandiganbayan*, supra note 32, at 316; italics in the original.

[58] G.R. Nos. 207154 & 222046, December 5, 2019.

[59] Id. at 14.

[60] *Balitaosan v. Secretary of Education Culture and Sports*, G. R. No. 138238, September 2, 2003, 410 SCRA 233, 235-236.

for this administrative violation, jurisprudence instructs that for an act to constitute such an administrative offense, it need not be related to or connected with the public officer's official functions, but the questioned conduct must be one that tarnishes the image and integrity of his public office.[61]

Here, Turiano's participation in the questionable transaction and the imprimatur given by him through his signatures on the checks, taint the public's perception of Iriga City PBAC. This is conduct prejudicial to the best interest of the service.

However, the Court finds no substantial evidence to hold him administratively liable for dishonesty.

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention.[62]

Here, the *undated* and *unnumbered* Acceptance and Inspection Reports certifying complete delivery of all 789 liters/bottles of fertilizers do not amount to a distortion of truth since it is nonetheless established that all 789 liters/bottles of fertilizers were subsequently delivered to and received by Iriga City. While, the Ombudsman and the CA found that only 514 liters/bottles of fertilizers were *initially* ordered and delivered the following day,[63] it is undisputed that all the fertilizers were subsequently received by Iriga City. This is so alleged in the complaint and also supported by other evidence.[64]

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[61] *Mansue Nery Lukban v. Ombudsman Conchita Carpio-Morales*, G.R. No. 238563, February 12, 2020.

[62] *Office of the Ombudsman v. P/C Supt. Luis L. Saligumba*, G.R. No. 212293, June 15, 2020.

[63] Supra notes 2 and 4; italics supplied.

[64] Delivery Receipt No. 0135 (Annex F), *rollo*, p. 78: and Letter dated August 10, 2004 (Annex 1), id. at 81.

The Court is, thus, inclined to rule that the Acceptance and Inspection Reports do not distort the number of fertilizers delivered to and received by Iriga City, neither did Turiano exhibit a disposition to deceive in signing the said documents.

Imposable penalty

Under Section 52 of URACCS, the administrative offense of grave misconduct is punishable with dismissal for the first offense[65] while conduct prejudicial to the best interest of the service is punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense.[66]

In accordance with Section 55 of URACCS, the penalty prescribed for grave misconduct, the most serious charge, shall be imposed. Thus, the penalty of dismissal is proper.

WHEREFORE, in view of the foregoing premises, the Petition for Review on *Certiorari* dated April 7, 2016 is **DENIED**. The Decision dated November 6, 2015 and Resolution dated February 15, 2016 of the Court of Appeals, Sixth Division, in CA-G.R. SP No. 140220 are hereby **AFFIRMED**.

SO ORDERED.

Hernando,[*] *Carandang, Zalameda,* and *Gaerlan, JJ.,* concur.

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[65] URACCS, Rule IV, Section 52(A)(3).

[66] Id., Section 52(A)(20).

[*] Additional member per Raffle dated December 9, 2020 *vice* Chief Justice Diosdado M. Peralta.

FIRST DIVISION

[G.R. No. 223178. December 9, 2020]

VICENTE T. GUERRERO, *Petitioner, v.* **PHIL. PHOENIX SURETY & INSURANCE, INC.,** *Respondent.*

APPEARANCES OF COUNSEL

Romeo S. Subaldo for petitioner.
Rhodela Virginia V. Garcia for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated June 23, 2015 and the Resolution[3] dated January 20, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 101902. The Decision and the Resolution denied petitioner's appeal and affirmed the Decision[4] dated May 6, 2013 of the Regional Trial Court (RTC) of Manila, Branch 11 ordering petitioner Vicente T. Guerrero (Guerrero) and his co-defendant, Rogelio Cordero (Cordero), to pay respondent Phil. Phoenix Surety & Insurance, Inc. (Phoenix) ₱425,100.00 representing the losses incurred by Phoenix, the amount of ₱9,180.00 as reimbursement for the participation fee paid by a certain Atty. Joseph Agustin Gaticales (Gaticales), attorney's fees, and cost of suit.

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[1] *Rollo*, pp. 9-16.

[2] Penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Leoncia R. Dimagiba and Maria Elisa Sempio Diy; id. at 22-33.

[3] Id. at 43-44.

[4] Penned by Presiding Judge Cicero D. Jurado, Jr.; id. at 112-116.

Facts of the Case

On December 31, 2008 at 6:30 p.m., an Isuzu Sportivo vehicle (Isuzu) owned by Gaticales figured in a vehicular accident along the National Highway, Barangay Gines, Zarraga, Iloilo, with Guerrero's Chevrolet pick-up truck (Chevrolet). At the time, the Chevrolet was driven by Cordero.[5] The left front bumper, headlight, signal light, front fender, front door, rear door, rear fender, rear tire, rear bumper, and other parts of the Isuzu were damaged by the incident. When the incident was reported to the nearest police station, *i.e.*, Zarraga Municipal Police Station, a certain PO2 Jose Diestro (PO2 Diestro) was sent to the place of the accident to investigate and make a police report on his findings. It was found that Guerrero's Chevrolet overlapped the center line of the highway, encroaching the lane occupied by the Isuzu (which was moving in the opposite direction) and resulting in a head-on collision between the two vehicles. It was also noted that Cordero fled after the incident. The incident was recorded in the police blotter under entry no. 1327 dated December 31, 2008 and entered at 7:30 p.m.[6]

Gaticales then filed an own damage claim with Phoenix — a corporation engaged in non-life insurance where Gaticales had the Isuzu insured — for the amount of ₱810,000.00 and declared his Isuzu as a constructive total loss. After Phoenix paid the amount of ₱810,000.00 to Gaticales, Gaticales executed a Release of Claim in favor of Phoenix subrogating the latter to all his rights to recover on all claims as a consequence of the accident.[7] Since Phoenix sold the Isuzu in a public auction for ₱399,050.00, it filed a Complaint[8] for damages against Guerrero and Cordero for the following amounts: (1) the balance of ₱425,100.00 (equivalent to the ₱810,000.00 Phoenix paid Cordero and ₱14,150.00 it paid its handling insurance adjuster

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[5] Id. at 23-24.

[6] Id. at 69.

[7] Id. at 48-49.

[8] Id. at 46-50; docketed as Civil Case No. 09-122267.

less ₱399,050.00 the Isuzu was sold for in the public auction); (2) ₱9,180.00 paid by Gaticales as his participation fee; (3) ₱42,500.00 attorney's fees plus ₱2,500.00 as appearance fee for its counsel; and (4) cost of suit.[9]

In the Complaint, Phoenix averred that the accident could have been avoided if Cordero exercised due care in driving the Chevrolet and if Guerrero exercised the required diligence in supervising Cordero as Cordero's employer. Phoenix thus sought to have Guerrero solidarily liable with Cordero for the abovementioned amounts.[10]

To prove its claim, Phoenix attached to the Complaint the following documents: (1) Gaticales' Insurance Policy with Phoenix;[11] (2) the Zarraga Municipal Police Station's Certification[12] dated January 5, 2009 and issued by Police Inspector/Chief of Police Romar V. Peregil (PI Peregil); (3) two pictures of the Isuzu showing the damages sustained by it;[13] (4) Disbursement Voucher for the amount of ₱824,150.00;[14] (5) Release of Claim (Loss and Subrogation Receipt) signed by Gaticales in favor of Phoenix;[15] (6) Demand Letter dated August 1, 2009 with its registry receipts;[16] and (7) engagement letter with Phoenix's counsel.[17] The police certificate, certifying the contents of the police blotter issued by PO2 Diestro, states:

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[9] Id. at 50.

[10] Id. at 48-50.

[11] Id. at 52.

[12] Id. at 53, 69.

[13] Id. at 54.

[14] Id. at 56.

[15] Id. at 55.

[16] Id. at 57-60.

[17] Id. at 61-62.

C E R T I F I C A T I O N

Quoted hereunder is the record of event from the Police Blotter of Zarraga Municipal Police Station, Zarraga, Iloilo, in blotter entry No. 1327 dated 31 December 2008.

Entry No. 1327

31 December 2008, 7:30 P.M. — INFO — VEHICULAR ACCIDENT — A concerned citizen informed this Police Station thru telephone call informing that there was a vehicular accident that transpired at Brgy. Gines, Zarraga, Iloilo. Immediately thereafter PNP team of this Police station led by PO2 Jose Diestro proceeded at the scene of [the] incident. Investigation conducted disclosed that on or about 6:30 P.M. of this date, Joseph Agustin Gaticales y Capawan, 41 years old, married, resident of San Mateo St., Ledesco Village, Lapaz, Iloilo City, holder of Professional Driver's License no. F03-09-049829 with expiry date 08-22-2009 while driving his Isuzu Sportivo with plate no. ZCZ-326 under OR No. 369927967 dated 06/15/2006 and CR No. 2502057-5 dated 06/15/2006 with registration valid for three (3) years, en route from north to south direction heading towards Iloilo City was accidentally bumped by Chevrolet pick up with plate no. FAJ-877 under OR no. 652801166 dated 09/15/2008 and CR [n]o. 481593-5 dated 07/05/2005, owned by Vicente Guerrero, resident of 20 Lacson St., Bacolod City, Neg. Occ., upon reaching along the national highway of Brgy. Gines, Zarraga Iloilo a collision appeared. The driver of the Chevrolet pick up fled away to unknown direction after the incident. Investigation conducted disclosed that the Chevrolet pickup overlapped to the center line which resulted [in] the accident. That the Isuzu Sportive incurred damaged *(sic)* on its left portion of bumper, head light, signal light, front fender, hood. Front door, rear door, rear fender, rear tire, rear bumper and other parts of its body. While the Chevrolet pick up incurred also damages on its left portion of bumper, hood, headlight, signal light, front fender, front wheel and broken windshield. That all the damaged *(sic)* of both vehicles could only be determined by an expert mechanic.

Entry No. 01

31 January 2009, 8:00 A.M. — INFO — ADDENDUM RE VEHICULAR ACCIDENT TRANSPIRED 6:30 P.M. OF DECEMBER 31, 2008 — Follow up investigation conducted by this Police office, the driver of Chevrolet pick up late no. FAJ-877 was identified as Rogelio Cordero, Jr. y Zurita, of legal age, married, temporarily resides at Melliza St., Poblacion Ilaud, Zarraga Iloilo,

a native of Bonifacio Ext., Silay City, Neg. Occ. holder of professional driver's license no. F01-05-000862 with expiry date 03-02-2010.

This certification is being issued upon the request of Atty. Joseph Gaticales for whatever legal purpose it may serve best.

(sgd.)
ROMAR V. PEREGIL
Police Inspector
Chief of Police[18]

In his Answer with Compulsory Counterclaim,[19] Guerrero denied any vicarious liability from the vehicular accident because he exercised due diligence in the selection and supervision of his employees. According to him, Cordero was not authorized to operate the Chevrolet because the car was assigned to another employee. The business owned by Guerrero enforced a strict policy against the unauthorized use or possession of company property. Despite this, Cordero opted to use Guerrero's Chevrolet on December 31, 2008 because of strong rains. Cordero, coming from a marketplace near the construction site where the Chevrolet was parked, was soaking wet from riding a motorcycle. Thus, he took shelter in the said construction site and drove the Chevrolet home without Guerrero's knowledge and consent. Cordero even picked up a friend along the way. Nevertheless, Guerrero alleged that Cordero drove slowly along the national highway due to the rain while Gaticales was the one driving fast with his Isuzu's headlights at high beam. Disoriented and confused, Cordero and his companion just fled the scene. Thus, Guerrero accused Gaticales of negligently hitting the Chevrolet.[20]

Guerrero also questioned Phoenix's prayer that Guerrero reimburse Gaticales the latter's participation fee of ₱9,180.00 because Gaticales is not a party to the suit.[21]

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[18] Id. at 69.

[19] Id. at 82-93.

[20] Id. at 86-88.

[21] Id. at 91.

During trial, Phoenix presented as its lone witness its claims manager, Roberto Salaver (Salaver). Aside from identifying his judicial affidavit, Salaver also identified the police certificate, which he also referred to as the police investigation report. Guerrero, on the other hand, testified on his behalf and presented his legal staff, Salvador M. Acsay (Acsay), as his second witness. Acsay testified that (1) Guerrero's company issued a Memorandum dated December 18, 2006 allowing only authorized or registered drivers of company vehicles to operate the same and only for the company's transactions and operations; (2) Acsay made known and implemented the policy covered by the said memorandum; and (3) Cordero was suspended for violating the said policy, as evidenced by a Memorandum dated January 6, 2009.[22]

Ruling of the Regional Trial Court

In a Decision[23] dated May 6, 2013, the RTC granted Phoenix's complaint and declared Guerrero and Cordero solidarily liable to Phoenix, as follows:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff and against defendants as follows:
>
> 1. Defendants are directed, jointly and severally, to pay plaintiff the amount of ₱425,100.00 representing the subrogated loss incurred by the plaintiff in settling the damages insured vehicle on a constructive total loss basis;
>
> 2. Defendants are directed jointly and severally, to pay plaintiffs assured, Atty. Joseph Agustin Gaticales, the sum of ₱9,180.00 as his reimbursement of his participation in the settlement of his own damaged claim on a constructive total loss basis;
>
> 3. Defendants are directed, jointly and severally, to pay plaintiff attorney's fees in the amount of ₱42,500.00 plus an additional amount of ₱2,500.00 per appearance every time plaintiff's counsel or his assistant appears in court to attend to the legal needs of the plaintiff; and

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[22] Id. at 114.

[23] Supra note 4.

4. To pay the cost of the suit.

SO ORDERED.[24]

Using the principle of *res ipsa loquitur*, the trial court concluded that Cordero and Guerrero were solidarily liable because the accident was due to Cordero's negligent driving of Guerrero's Chevrolet. The RTC declared that: (1) Guerrero's Chevrolet hit the front left portion of Gaticales' Isuzu because of Cordero's negligence (as shown by the police report that the Chevrolet overlapped to the center line of the highway and that Cordero immediately fled the scene after the accident); (2) the Chevrolet was under the exclusive control of Cordero; and (3) Gaticales is not guilty of contributory negligence.[25]

In his Motion for Reconsideration,[26] Guerrero alleged that the RTC improperly applied the doctrine of *res ipsa loquitur* because none of the requisites for the doctrine's application are present. According to Guerrero: (1) it was never established that the accident does not ordinarily occur in the absence of negligence; (2) Phoenix's sole witness never testified that Guerrero's Chevrolet was under Cordero's exclusive control since the witness' knowledge is based only on the police report; and (3) it was never proven that Gaticales was not guilty of contributory negligence. Guerrero pointed out that Phoenix failed to prove an additional requirement — *i.e.*, Gaticales had no knowledge of or means of knowing the cause of the accident because he was never presented as a witness. Furthermore, Guerrero claimed that *res ipsa loquitur* applies only when evidence establishing negligence is absent or not readily available and that Phoenix could have obtained readily available evidence in the form of Gaticales' testimony.[27]

Guerrero also averred that the trial court should not have given the police certificate any probative value because it was

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[24] *Rollo*, p. 116.

[25] Id. at 114-116.

[26] Id. at 117-127.

[27] Id. at 120-121.

merely copied from a police blotter, thus, falling short of the requirements set forth in Section 44 (now Section 46),[28] Rule 130 of the Rules of Court. In particular, Phoenix did not prove that the police report was prepared by a public officer who had sufficient knowledge of the facts, which he acquired personally or through official information.[29]

However, the trial court denied Guerrero's motion for reconsideration in an Order[30] dated September 12, 2013. This prompted Guerrero to file an appeal with the CA.

Ruling of the Court of Appeals

In its Decision[31] dated June 23, 2015, the appellate court affirmed the findings of the RTC, thus denying Guerrero's appeal.

The CA ruled that the police certificate is admissible and is an exception to the hearsay rule because it is an official record. Under Section 46 of the Rules of Court, an official record is defined as:

> Section 46. *Entries in official records*. — Entries in official records made in the performance of his or her duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

Citing *Malayan Insurance Co., Inc. v. Alberto*,[32] the appellate court found that the requisites for the admissibility of the police certificate were complied with, namely: (1) the entry was made by a public officer specially enjoined by law to do so; (2) it was made by the public officer in the performance of his duties;

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[28] Now renumbered as Section 46, Rule 130 of the Rules of Court, as amended.

> Section 46. *Entries in official records*. — Entries in official records made in the performance of his or her duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[29] Id. at 121-122.

[30] *Rollo*, p. 131.

[31] Supra note 2.

[32] 680 Phil. 813 (2012).

(3) the public officer had sufficient knowledge of the facts stated by him, which was acquired through official information based on the investigation conducted by a police investigator (*i.e.*, PO2 Diestro). The CA thus concluded that the police certificate, as well as the pictures of the insured vehicle, established a rebuttable presumption of negligence on the part of Cordero.[33]

Even if the police certificate and blotter were declared inadmissible, the CA maintained that Cordero and Guerrero would still be found liable under the doctrine of *res ipsa loquitur*. The appellate court held that the requirements for the operation of the said doctrine were met, *i.e.*, (1) the accident is of a kind which ordinarily does not occur in the absence of someone's negligence; (2) it is caused by an instrumentality within the exclusive control of Cordero — the negligent party as pointed out by Phoenix; and (3) there is no possibility of contributory negligence on the part of Gaticales. Coupled with Cordero's act of fleeing the scene of the accident, Cordero and Guerrero (as Cordero's employer) were found liable to Phoenix and Gaticales for the amounts previously awarded by the trial court.[34]

Petitioner's Arguments

Undeterred, Guerrero filed the instant petition for review on *certiorari*. Guerrero alleged that he was denied his constitutional right to meet and cross-examine PO2 Diestro, the police who investigated the accident and prepared the police report. He claimed that the police blotter is not conclusive proof of the truth of its entry since the officer who prepared it was never presented in court. Guerrero also questioned the probative value of the pictures presented by Phoenix because these do not show that they were taken at the scene of the accident and were not identified by the person who took the said pictures. Guerrero now asks this Court to determine whether the doctrine of *res ipsa loquitur* applies based on a picture of the damaged vehicle alone.[35]

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[33] *Rollo*, pp. 28-29.

[34] Id. at 30-31.

[35] Id. at 12-16.

Respondent's Comment

In its Comment,[36] Phoenix sought to have the instant petition dismissed for raising a factual issue since it questions the probative value of Phoenix's testimonial and documentary evidence.[37] It also averred that the constitutional right of an accused to meet the witnesses face to face does not apply to a civil complaint for damages.[38] Lastly, Phoenix agreed with the RTC and CA when they applied the doctrine of *res ipsa loquitur*, citing the same reasons used by the trial and appellate courts.[39]

Ruling of the Court

The strength of Phoenix's claim for damages mainly rests on the admissibility and probative value of the police certificate (embodying the contents of the police blotter) and the pictures of the damaged Isuzu. The lower courts both concluded that the police blotter is an exception to the hearsay rule because it is classified as an entry in official record, following Section 46, Rule 130 of the Rules of Court.[40]

A police blotter entry, or a certification thereof, is admissible in evidence as an exception to the hearsay rule under Section 46, Rule 130 of the Rules of Court. In order for it to be admissible, the said evidence must be properly presented in evidence. What must have been presented in evidence was either the police blotter itself or a copy thereof certified by its legal keeper.[41]

Otherwise stated, the *nature* of the evidence as admissible — being an exception to the hearsay rule — is different from *how* a party should introduce the evidence to make it admissible.

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[36] Additional *rollo*, pp. 8-17.

[37] Id. at 9-11.

[38] Id. at 11-12.

[39] Id. at 12-16.

[40] *Supra* note 2 at 28-29; *supra* note 4 at 114-116.

[41] *See* Francisco (2017), Basic Evidence (3rd Ed.), p. 325, citing 4 Jones on Evidence, 2nd Ed., Section 1704.

The police blotter itself could have been presented to prove the existence of the blotter entry and a copy of the said entry made in order for the opposing party to determine whether the copy is a faithful representation of the entry in the police blotter. The party offering the blotter entry may opt to present secondary evidence in the form of a certified copy of the blotter entry since such is allowed under Section 8, Rule 130 of the Rules of Court. Following Section 8, Rule 130 of the Rules of Court, "[w]hen the original of the document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof."

Here, the Certification[42] dated January 5, 2009 issued by Zarraga Municipal Police Station's Chief of Police, PI Peregil, did not state that PI Peregil was the legal custodian of the police blotter.[43] Even if We were to assume that PI Peregil had legal custody of the police blotter as Zarraga Municipal Station's Chief of Police, the Certification should still be identified by PI Peregil himself or his representative to attest to the contents of the Certification, as copied from the police blotter, and the authenticity of PI Peregil's signature. Salaver is incompetent to testify on the Certification's authenticity and due execution because Salaver is not an authorized representative of PI Peregil or even a police officer assigned to the Zarraga Municipal Police Station. Phoenix's failure to properly present the Certification does not extinguish any doubts on the genuineness of the said Certification.

With its inadmissibility, the lower courts erred in assigning any probative value to the Certification. Therefore, the Certification cannot be used as basis for applying the doctrine of *res ipsa loquitur*.

This Court is now left to determine whether the pictures Phoenix presented during trial will suffice to prove Cordero's negligence under the principle of *res ipsa loquitur*.

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[42] *Rollo*, pp. 53, 69.

[43] Id.

The pictures presented by Phoenix are likewise inadmissible in evidence for Phoenix's its failure to prove its due execution and authenticity. As this Court held, "photographs, when presented in evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced."[44] This requirement for admissibility was similarly stated in Section 1, Rule 11 of the Rules on Electronic Evidence when it required photographic evidence of events to be "identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof." While We have allowed witnesses (other than the person who took the photograph) to identify pictures presented in evidence, the said witness must be competent to identify the photograph as a faithful representation of the object portrayed.[45] A competent witness must be able to "assure the court that they know or are familiar with the scenes or objects shown in the pictures and the photographs depict them correctly."[46]

Salaver is not competent to identify the pictures presented in evidence. Salaver was not at the scene of the crime. Therefore, he does not have personal knowledge of the scene or objects shown in the pictures. More importantly, the said pictures do not depict the vehicular accident — *i.e.*, the position of the Isuzu and the Chevrolet along the National Highway at the time of the accident. The Chevrolet was not in any of the pictures presented by Phoenix. It cannot be presumed that (1) the Chevrolet was the instrumentality that caused the accident; (2) Gaticales was the only injured party; and (3) Gaticales was not guilty of any contributory negligence.

All told, Phoenix failed to discharge its burden of proving its case with preponderance of evidence.

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[44] *Asian Terminals, Inc. v. Padoson Stainless Steel Corp.*, G.R. No. 211876, June 25, 2018, citing *People v. Gonzales*, 582 Phil. 412, 421 (2008).

[45] *Sison v. People*, 320 Phil. 112, 131 (1995).

[46] Pronove, Jr. (1995), pp. 40-41, citing 5 Mora, Rules of Court 80 (1980), citing *New York v. Moore*, 105 F. 725.

Guerrero's prayer for ₱500,000.00 as moral damages, ₱200,000.00 as exemplary damages, and ₱150,000.00 as attorney's fees are denied for lack of any factual or legal basis. Guerrero failed to justify why he should be awarded the abovementioned monetary claims as the instant petition focused solely on the inadmissibility of the police certificate and pictures.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 23, 2015 and the Resolution dated January 20, 2016 of the Court of Appeals in CA-G.R. CV No. 101902 are **REVERSED** and **SET ASIDE**. The Complaint in Civil Case No. 09-122267 is **DISMISSED**.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 227121. December 9, 2020]

COMMISSIONER OF INTERNAL REVENUE, *Petitioner*, *v.* **THE HONGKONG SHANGHAI BANKING CORPORATION LIMITED - PHILIPPINE BRANCH,** *Respondent*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Leagogo 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] under Rule 45 of the Rules of Court filed by petitioner Commissioner of Internal Revenue (CIR), assailing the Decision[2] dated May 17, 2016 and Resolution[3] dated September 9, 2016 of the Court of Tax Appeals *en banc* (CTA EB) in CTA EB Case No. 1257, which affirmed the CTA Third Division's (CTA Division) Decision[4] dated October 13, 2014

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[1] *Rollo*, pp. 10-47.

[2] Id. at 53-71. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen Ringpis-Liban, concurring.

[3] Id. at 73-78. Penned by Associate Justice Cielito N. Mindaro-Grulla with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring while Associate Justice Esperanza R. Fabon-Victorino, on official business.

[4] Id. at 80-97. Penned by Associate Justice Lovell R. Bautista with Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring.

and Resolution[5] dated December 10, 2014 in CTA Case No. 8428. The CTA Division granted respondent The Hongkong Shanghai Banking Corporation Limited-Philippine Branch's (respondent) petition for review and cancelled the Final Decision on Disputed Assessment (FDDA) dated January 18, 2012 and Final Assessment Notice (FAN) dated June 28, 2011.[6]

Facts

The facts as summarized by the CTA Division are as follows:

> [Respondent], The Hongkong and Shanghai Banking Corporation Limited – Philippine Branch, is a duly licensed branch of The Hongkong and Shanghai Banking Corporation Limited [(HSBC)] x x x.
>
> x x x x
>
> Prior to July 2008, HSBC carried on in the Asia Pacific Region, including the Philippines, among other businesses, a Merchant Acquiring Business [(MAB)], whereby it entered into Merchant Agreements with accredited merchants to honor credit cards it issued under various card associations for which it is a member.
>
> HSBC, through [respondent], then created Global Payments Asia Pacific-Phils., Inc. [GPAP-Phils. Inc.)] to transfer its [MAB] in the Philippines.
>
> On July 22, 2008, GPAP-Phils[.] was incorporated, wherein shares of stocks were issued to [respondent] in exchange for the fair-market value of the Point-of-Sale ("POS") Terminals, Merchant Agreements, and transfer of the [MAB] of HSBC.
>
> On July 24, 2008, a Share Sale and Purchase Agreement was executed between HSBC and Global Payment Asia Pacific (Singapore Holdings) Private Limited [(GPAP-Singapore)] for the transfer of said shares.
>
> On September 3, 2008, a Deed of Assignment between [HSBC] and GPAP-Singapore was executed, wherein the former assigned its GPAP-Phils[.] shares to the latter.

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[5] Id. at 108-110.

[6] Id. at 96.

On September 5, 2008, the Documentary Stamp Tax in the amount of ₱52,365.75, based on the par value of the shares, was paid.

On September 22, 2008, [respondent] filed an Application and Joint Certification with [petitioner] to secure a ruling on the tax-free exchange under Section 40(C)(2) of the 1997 National Internal Revenue Code [(NIRC)], as amended, regarding the transfer of the POS Terminals and [MAB].

On September 28, 2008, the Capital Gains Tax [(CGT)] in the amount of ₱89,929,292.10 was paid, in relation to the above said Deed of Assignment dated September 3, 2008.

On January 23, 2009, a Certification/Ruling No. SN:018-2009 was issued by Assistant Commissioner of Legal Service, certifying that the transfer of POS Terminals and [MAB] with Substituted Basis, in exchange for the GPAP-Phils[.] shares are not subject to tax pursuant to Section 40(C)(2) of the 1997 NIRC, as amended.

On September 8, 2010, however, [petitioner] issued a Notice of Informal Conference addressed to [respondent], the same was received by the latter on September 17, 2010.

On January 7, 2011, [petitioner] issued a Preliminary Assessment Notice ("PAN") against [respondent] for deficiency Income Tax in the amount of ₱296,936,948.59, inclusive of interest, from its gain on the sale of the [MAB]; the same was received on January 18, 2011.

On February 2, 2011, [respondent] filed its Protest of even date to the said PAN. [It also filed a Supplemental Position Paper on March 10, 2011.]

On March 14, 2011, [petitioner] issued a Letter, granting [respondent's] request to refer the matter to the Legal and Inspection Group for resolution; the same was received on March 30, 2011.

On March 15, 2011, [respondent] then executed and duly filed a Waiver of the Statute of Limitations; the same was duly received and acknowledged by [petitioner].

On June 28, 2011, [petitioner], thus, issued a [FAN] against [respondent] for deficiency Income Tax in the amount of ₱318,781,625.17, inclusive of interest, on the sale of "Goodwill," pursuant to Section 27(A) of the 1997 NIRC, as amended; the same was received by [respondent] on July 11, 2011. x x x

x x x x

On July 26, 2011, [respondent] filed its Administrative Protest, which was received by [petitioner] on even date.

On January 18, 2012, [petitioner] issued a Final Decision on Disputed Assessment, which was received by [respondent] on January 24, 2012.

On February 16, 2012, [respondent], thus, filed the present Petition for Review [with the CTA Division].

[In its Answer, the CIR claimed that the Deed of Assignment did not pertain to a sale of shares but to a sale or transfer of business or "Goodwill," which is subject to ordinary income tax and not CGT].[7]

CTA Division Ruling

In its Decision dated October 13, 2014, the CTA Division granted respondent's petition and cancelled the FDDA and FAN.

The CTA Division found that, contrary to the CIR's assertion, the evidence bears that the transaction in question is a sale or transfer of capital asset, and not a sale of an ordinary asset, to wit:

x x x based on the records of the case — the creation of GPAP-Phils[.] to transfer the Merchant Acquiring Business of HSBC by way of additional paid-in capital; the subscription of 139,640 shares of stocks of GPAP-Phils. in exchange for HSBC's POS terminals; the subscription of 1 common share of GPAP-Phils[.] in exchange for HSBC's Merchant Agreements; and the subsequent assignment of the total number of shares of 139,641, subscribed by HSBC to GP AP-Singapore, clearly shows that it is a sale of capital asset, as earlier quoted under Section 39(A)(1) of the 1997 NIRC, as amended, to which [respondent] paid the total amount of ₱89,929,292.10.[8]

The CTA Division further ruled that "Goodwill" is connected to the business itself and cannot be allocated without regard to the business. Thus, the CIR cannot treat separately the alleged

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[7] Id. at 81-90.

[8] Id. at 95.

sale of "Goodwill" from the transfer of HSBC's MAB to GPAP Phils. and conveniently allocate and reclassify the same as a sale of ordinary asset subject to income tax.[9]

In its Resolution dated December 10, 2014, the CTA Division denied CIR's motion for reconsideration.

CTA EB Ruling

In the assailed Decision, the CTA EB affirmed the findings of the CTA Division.

The CTA EB reiterated that "Goodwill" is an intangible asset, cannot exist independently of the business, nor can it be sold, purchased or transferred separately without carrying out the same transactions for the business as a whole. Thus, while HSBC and GPAP-Singapore agreed to recognize and value the goodwill of the MAB in the Share Sale and Purchase Agreement, the same cannot be sold or purchased independently of the MAB.[10]

Further, the CTA EB agreed with the CTA Division that the sale of HSBC's GPAP-Phils. Inc. shares to GPAP-Singapore at a premium, whereby the goodwill of the MAB was recognized and valued, involves a sale of capital asset subject to CGT and not Income Tax.[11]

The CIR sought reconsideration but the same was denied in a Resolution dated September 9, 2016.

Hence, this petition.

Issue

Whether the CTA EB erred in cancelling the deficiency income tax assessment against respondent on the alleged sale of "Goodwill" of its MAB for taxable year 2008.

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[9] Id. at 96.

[10] Id. at 65-66.

[11] Id. at 67-70.

The Court's Ruling

The Petition lacks merit.

In its intention to restructure its MAB in the Asia-Pacific Region in order to achieve efficiency, HSBC, through respondent, entered into two transactions: (1) the transfer of its Point of Sales Terminals, other information technology assets and Merchant Agreements of its MAB in the Philippines, in exchange for GPAP-Phils. Inc. shares and (2) the subsequent sale or assignment of its GPAP-Phils. Inc. shares to GPAP-Singapore.

It is beyond dispute that the first transaction qualifies as a tax-free exchange under Section 40, paragraphs (C) (2)[12] and (6) (c)[13] of the 1997 NIRC, as amended. Pursuant to this provision, no gain or loss shall be recognized both to the transferor and transferee corporation on the transfer or exchange of property provided the following requirements are present: (1) the transferee is a corporation; (2) the transferee exchanges its shares of stock for property/ies of the transferor; (3) the transfer is made by a person, acting alone or together with others, not exceeding four persons; and, (4) as a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.[14]

All the foregoing requirements are present in this case.

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[12] ***(C) Exchange of Property***. —

x x x x

No gain or loss shall also be recognized if property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four (4) persons, gains control of said corporation: Provided, That stocks issued for services shall not be considered as issued in return for property.

[13] (c) The term "***control***," when used in this Section, shall mean ownership of stocks in a corporation possessing at least fifty-one percent (51%) of the total voting power of all classes of stocks entitled to vote.

[14] *Commissioner of Internal Revenue v. Filinvest Development Corporation,* G.R. Nos. 163653 & 167689, July 19, 2011, 654 SCRA 56, 76.

HSBC, through respondent, transferred the assets of its MAB in the Philippines to GPAP-Phils. Inc. as payment for the subscription of the 139,641 common shares of GPAP-Phils. Inc. As a result of such transfer, HSBC became the majority stockholder of GPAP-Phils. Inc. and gained 99.99% control of the transferee corporation. Thus, both HSBC and GPAP-Phils. Inc. shall not recognize any gain or loss on the transfer of the MAB in exchange for shares. Consequently, respondent will not be liable for capital gains tax, income tax or creditable withholding tax arising from such exchange of properties. Notably, in its Certification[15] dated January 23, 2008, the CIR recognized that the first transaction between HSBC and GPAP-Phils. Inc. is not subject to income tax, capital gains tax, expanded withholding tax and gross receipts tax.[16]

It should be emphasized, however, that when the property or shares of stock acquired through a tax-free exchange is subsequently sold, the said subsequent sale shall now be subject to income tax.[17] This is because, in a tax-free exchange, the recognition of gain or loss arising from the exchange is merely deferred.[18] Thus, the second transaction, wherein HSBC subsequently assigned its GPAP Phils. Inc. shares to GPAP Singapore, is now subject to capital gains tax,[19] to which respondent paid the total amount of ₱89,929,292.10.[20]

The CIR, however, insists the second transaction involves an alleged sale of the "goodwill" of the MAB, which makes HSBC liable for deficiency income taxes.[21] The CIR anchors

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[15] *Rollo*, pp. 437-439.

[16] Id. at 437.

[17] Hector S. De Leon and Hector M. De Leon, Jr., THE NATIONAL INTERNAL REVENUE CODE ANNOTATED, 11th ed. Vol. 1 (2015), p. 542.

[18] Eufrocina M. Sacdalan-Casasola, NATIONAL INTERNAL REVENUE CODE ANNOTATED, Vol. 2 (2013), p. 454.

[19] See Revenue Regulations No. 6-2008, April 22, 2008, Sec. 7.

[20] *Rollo*, p. 95 and pp. 443-444.

[21] Id. at 40.

its finding on the value of the "goodwill" indicated in the Share Sale and Purchase Agreement in the amount of ₱885,378,821.00.[22] Thus, in the FAN dated June 28, 2011, the CIR subjected to the regular corporate income tax of 35% as provided under Section 27 (A) of the 1997 NIRC, as amended, the gain derived by HSBC on the sale of its GPAP-Phils. Inc. shares, *viz.*:

INCOME TAX

Actual Selling Price	899,342,921.00
Less GPAPPI Shares of Stocks	13,964,100.00
Gross Amount	P 885,378,821.00
Income Tax Rate	35%
Income Tax Due	309,882,587.35
Advance Payment 9-29-08	89,929,292.10
Basic Income Tax Deficiency	219,953,295.25
Interest (April 16, 2009 to July 15, 2011)	98,828,329.92
Income Tax Payable	**318,781,625.17**[23]

This is error. The Court agrees with the findings of the CTA that the assessment has no legal and factual bases because the subject transaction is covered by capital gains tax and not regular corporate income tax.

The records clearly show that the object of the transaction between HSBC and GPAP-Singapore is the 139,641 GPAP-Phils. shares. The Share Sale and Purchase Agreement between HSBC and GPAP-Singapore states that:

> (E) The Seller has agreed to sell the Philippine Subsidiary Shares to the Purchaser, and the Purchaser has agreed to purchase the Philippine Subsidiary Shares in reliance *(inter alia)* upon the Seller's representations, warranties, indemnities, covenants and undertakings in this Agreement, for the Consideration and otherwise upon and subject to the terms and conditions of this Agreement.
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> x x x x

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[22] Id. at 27, 440.

[23] Id. at 362.

ARTICLE 2

SALE AND PURCHASE

2.1 Sale and Purchase.

> On the terms and subject to the conditions set forth in this Agreement, at Completion the Seller shall sell, and the Purchaser shall purchase, all outstanding shares of the Philippine Subsidiary free of all Encumbrances and together with all the rights now attaching thereto.[24]

Further, the Deed of Assignment provides:

"3.1. Consideration
In consideration for the sale of the Philippine Subsidiary Shares, the consummation of the Restructuring as provided in Schedule 3.1(a) and the entering into by the Bank of the Operative Documents to which the Bank is or will be a party, and upon and subject to the terms and conditions set forth in this Agreement and in reliance on the representations, warranties, indemnities, covenants and agreements of the Seller contained herein and therein, at and subject to Completion, the purchaser shall pay the Seller in the aggregate the sum of the U.S. Dollar equivalent of EIGHT HUNDRED NINETY NINE MILLION THREE HUNDRED FORTY TWO THOUSAND NINE HUNDRED TWENTY ONE PHILIPPINE PESOS (Php899,342,921.00) at the most recent prevailing exchange rate at completion. The exchange rate shall be the AM WT AVE found in Reuters page PDSPESO."[25]

Section 27(A) of the NIRC of 1997, as amended, provides that *except as otherwise provided in this Code*, an income tax shall be imposed on the taxable income derived by domestic corporations. Relevantly, paragraph (D) (2) thereof states that a *final tax* at the rates of 5% or 10% shall be imposed on the net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation not traded in the stock exchange. Revenue Regulations No. 6-2008,[26] which implements the aforesaid

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[24] Id. at 440-442.

[25] Id. at 381.

[26] CONSOLIDATED REGULATIONS PRESCRIBING THE RULES ON

provision, echoes Section 27 (D) (2) and provides for rules on the determination of gain or loss for the purpose of the imposition of CGT. In other words, the amount of the gain realized from the sale of shares of stock not traded through the local stock exchange, is in lieu of the regular corporate income tax. Moreover, in *Commissioner of Internal Revenue v. Ocier*, [27] this Court clarified that the CGT for the sale of shares of stocks not listed in the stock exchange refers to the final tax based on the net capital gains realized during the taxable year. Hence, a taxpayer is liable to pay CGT for the sale, barter, exchange or other disposition of shares of stock in a domestic corporation except if the sale or disposition is through the stock exchange.

Notably, in several rulings issued by the Bureau of Internal Revenue, it was recognized that the gain realized from the sale of shares acquired through a tax-free exchange transaction is subject to CGT.[28] Therefore, the subsequent disposition of HSBC's GPAP-Phils. Inc. shares in favor of GPAP-Singapore is subject to CGT and not to regular corporate income tax under Section 27 (A), upon which the CIR's assessment is based.

Further, the Share Sale and Purchase Agreement is explicit that the goodwill of the MAB was transferred by way of additional paid-in capital to GPAP-Phils. Inc.[29] Clearly, as the CTA Division aptly ruled, nothing in the Share Sale and Purchase Agreement supports the CIR's position that goodwill of the MAB was sold to GPAP-Singapore.[30]

Black's Law Dictionary defines goodwill as business' reputation, patronage and other intangible asset considered in appraising a business, especially for purchase.[31] It is the ability

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THE TAXATION OF SALE, BARTER, EXCHANGE OR OTHER DISPOSITION OF SHARES OF STOCK HELD AS CAPITAL ASSETS, April 22, 2008.

[27] G.R. No. 192023, November 21, 2018, 886 SCRA 235.

[28] See *rollo*, pp. 408-426.

[29] Id. at 440

[30] Id. at 96.

[31] BLACK'S LAW DICTIONARY (9TH ed.), p. 763.

of the business to generate income in excess of a normal rate on assets due to superior managerial skills, market position, new product technology, etc. In the purchase of business, goodwill represents the difference between the purchase price and the value of assets.[32]

Goodwill has also been referred to as "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or common celebrity, or reputation for skill, or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices."[33] It is derived from the assets associated with the business,[34] inseparable from the business to which it adds value, and exists where the business is carried on.[35] It has also been said that goodwill "has no meaning except in connection with some trade, business or calling";[36] hence, "cannot exist or be transferred apart from the business to which it is attached."[37]

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[32] Randall B. Wilhite, The Effect of Goodwill in Determining the Value of a Business in a Divorce, *Family Law Quarterly*, Volume 35, No. 2, p. 353 (2001), accessed at <http://www.jstor.org/stable/25740341>.

[33] *Bachrach Motor Co. v. Esteva*, G.R. No. 44510, December 24, 1938, 67 Phil. 16, 29.

[34] See Mona Shin, Lightened Taxpayer Burdens in the Sale of Personal Goodwill After H&M, Inc. v. Commissioner, *The Tax Lawyer*, Volume 67, No. 2 (2014), accessed at <http://www.jstor.org/stable/24247753>.

[35] Richard N. Owens, Goodwill in the Accounts, *The University Journal of Business*, Volume 1, No. 3, p. 284 (1923), accessed at <http://www.jstor.org/stable/2354868>.

[36] Walter J. Derenberg, Territorial Scope and Situs of Trademarks and Good Will, *Virginia Law Review*, Volume 47, No. 5, p. 736 (1961), accessed at <https://www.jstor.org/stable/1071060>.

[37] An Inquiry into the Nature of Goodwill, *Columbia Law Review*, Volume 53, No. 5, p. 673 (1953), accessed at <https://www.jstor.org/stable/1118896>.

In accounting, goodwill is described as the "future economic benefits arising from assets that are not capable of being individually identified and separately recognised."[38] It "arises as a result of property specific name and reputation, customer patronage, location, products, and similar factors, which generate economic benefits. It is inherent to the trade related property, and will transfer to a new owner on sale."[39]

Parsed from the foregoing, goodwill is essentially characterized as an intangible asset derived from the conduct of business, and cannot therefore be allocated and transferred separately and independently from the business as a whole. Thus, when HSBC transferred its MAB in the Philippines, inclusive of the Point of Sales terminals, other information technology assets and merchant agreements, to GPAP-Phils. Inc. in exchange for shares, the goodwill of the business was also transferred to GPAP-Phils. Inc., being the new owner of the MAB and its assets. When HSBC subsequently assigned its GPAP-Phils. Inc. shares to GPAP-Singapore, the goodwill of the MAB remains with GPAP-Phils. Inc. GPAP-Singapore merely steps into the shoes of HSBC as the majority stockholder of GPAP-Phils., Inc. Indeed, fundamental is the rule in corporation law that a corporation is clothed with a personality separate and distinct from its stockholders; and the "[m]ere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality."[40]

The CIR however finds the methodology employed by respondent as a form of a tax evasion scheme to escape income

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[38] PRESCRIBING THE PHILIPPINE VALUATION STANDARDS (1ST EDITION) — ADOPTION OF THE IVSC VALUATION STANDARDS UNDER PHILIPPINE SETTING, Department of Finance, Department Order No. 037-09, October 19, 2009.

[39] Id.

[40] *Construction & Development Corporation of the Philippines v. Cuenca*, G.R. No. 163981, August 12, 2005, 466 SCRA 714, 727.

tax liability. According to the CIR, the formation of GPAP-Phils. Inc. was to circumvent the law by classifying the subject transaction as a sale of shares of stock instead of a sale of asset and goodwill, which is subject to regular corporate income tax.

The Court is not persuaded.

A taxpayer has the legal right to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits.[41] This is called tax avoidance. It is the use of legal means to reduce tax liability. However, this method should be used by the taxpayer in good faith and at arms-length.[42]

In this case, when HSBC transferred the assets of its MAB in the Philippines to GPAP-Phils. Inc. in exchange for shares, pursuant to the tax-free exchange provision under Section 40 (C) (2) of the 1997 NIRC, as amended, and subsequently sold such shares to GPAP-Singapore and paid the corresponding CGT in accordance with Section 27 (D) (2) of the same Code, it simply availed of tax saving devices within the means sanctioned by law. Further, this methodology was adopted by HSBC not merely to reduce taxes but also for a legitimate business purpose — *i.e.*, the restructuring of the MAB to achieve more efficiency and economies of scale.[43] Consequently, what was employed to minimize taxes was a tax avoidance scheme.

Contrariwise, tax evasion is "a scheme used outside of those lawful means."[44] It "connotes fraud thru the use of pretenses and forbidden devices to lessen or defeat taxes."[45] To constitute

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[41] *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, G.R. No. L-13203, January 28, 1961, 1 SCRA 160, 168.

[42] *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, September 14, 2004, 438 SCRA 290, 298.

[43] See *rollo*, p. 431.

[44] *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, supra note 42.

[45] *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, supra note 41, at 167.

tax evasion, the following factors must be proven: "(1) the end to be achieved, *i.e.*, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due; (2) an accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and (3) a course of action or failure of action which is unlawful."[46] In other words, the payment of lesser taxes does not necessarily constitute tax evasion. The taxpayer's resort to minimize taxes must be in the context of fraud, which must be proven by clear and convincing evidence and cannot be based on mere speculation.[47] Here, the CIR failed to proffer any clear and convincing proof of fraud on the part of respondent.

Accordingly, the Court finds no reason to reverse the findings of the CTA EB and uphold the validity of the CIR's assessment against respondent.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The Decision dated May 17, 2016 and Resolution dated September 9, 2016 of the Court of Tax Appeals *en banc* in CTA EB Case No. 1257 are hereby **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

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[46] *Commissioner of Internal Revenue v. Estate of Benigno P. Toda, Jr.*, supra note 42, at 299.

[47] *Yutivo Sons Hardware Co. v. Court of Tax Appeals*, supra note 41, at 167.

FIRST DIVISION

[G.R. No. 232293. December 9, 2020]

EVELYN ABADINES CUICO, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) filed by the petitioner Evelyn Abadines Cuico (Cuico) assailing the Decision[2] dated October 28, 2016 and Resolution[3] dated May 15, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-CR No. 01927, which affirmed the Decision[4] dated April 27, 2012 of Branch 8, Regional Trial Court of Cebu City (RTC) in Criminal Case No. CBU-92807, finding Cuico guilty beyond reasonable doubt of violating Section 12, Article II of Republic Act No. 9165 (RA 9165).

The Facts

An Information was filed against Cuico for violating Section 12 of RA 9165, the accusatory portion of which reads:

That on or about the 15th day of June, 2011, at about 1:05 o'clock A.M., in the City of Cebu, Philippines, and within the jurisdiction

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[1] *Rollo*, pp. 10-32.

[2] Id. at 84-94. Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez, concurring.

[3] Id. at 103-104.

[4] Id. at 61-66. Penned by Presiding Judge Macaundas M. Hadjirasul.

of this Honorable Court, the said accused, with deliberate intent and without any lawful purpose did then and there have in her possession and her control twenty-four (24) disposable syringes and three (3) empty ampoules of Nubain used for injecting NUBAIN which instruments and/or equipments (*sic*) fit or intended for injecting nubain, otherwise known as NALBUPHINE HYDROCHLORIDE, now classified as dangerous drug per Dangerous Drug Board Resolution No. 1, Series of 2010.

CONTRARY TO LAW.[5]

When arraigned, Cuico pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

The prosecution's version, as summarized by the CA, is as follows:

According to prosecution witness PO3 Edmund Tiempo of the Cebu City Police Office, Station 1, on June 15, 2011, at around 1:05 A.M., their team, which was composed of SPO1 Erwin Ferrer, PO2 Marvin Sanson, and the witness himself, conducted a "foot patrol" in Barangay Kamagayan, Cebu City in connection with the report of rampant illegal activities in said area.

When they were in the interior part of Barangay Kamagayan, they saw a group of men coming out from a small shanty made of light materials. At that point, PO3 Tiempo, who was then standing near the open door of said shanty, saw accused-appellant inside the shanty holding a disposable syringe used for "injecting *nubain*." He knew said fact on account of his experience, being in the police service for fifteen (15) years, and having previously made more than ten (10) arrests involving illegal possession of drug paraphernalia in the same area. Thus, they accosted accused-appellant and introduced themselves as police officers.

Inside the shanty, they were able to seize twenty-three (23) more pieces of disposable syringes and three (3) pieces of empty ampules of *nubain* on a table. Then, PO3 Tiempo marked the disposable syringe, together with the additional items recovered on the table, with the initials "E.C.-1 06/15/11" up to "E.C.-27 06/15/11."

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[5] Id. at 85.

Afterwards, they proceeded to the police station wherein PO3 Tiempo made an inventory of said items, signed by SPO1 Ferrer and one Milford Trasmonte, an official of Barangay Parian, Cebu City. The incident was entered in the police blotter, and PO2 Sanson took photographs of the seized items in the presence of PO3 Tiempo and accused-appellant. PO3 Tiempo kept the seized items inside his locker and, during the trial, he presented them before the Trial Court, and identified them as the same items seized from accused-appellant.[6]

On the other hand, the evidence of the defense is based on the lone testimony of Cuico, whose testimony was likewise summarized by the CA as follows:

Accused-appellant raised the defenses of denial and frame-up. According to her, on June 15, 2011, at around 1:05 A.M. in Barangay Kamagayan, she was paid to attend to the video "karera" machine at her friend's house, which was situated at a distance of three (3) houses from hers.

While inside her friend's house, three (3) persons, whom accused-appellant did not know, came inside, introduced themselves as policemen, and asked if she was the video *karera* attendant. After answering in the affirmative, the policemen directed her to call the owner of the machine. However, she did not know the owner thereof. The police officers then brought accused-appellant to the police station.[7]

Ruling of the RTC

After trial on the merits, in its Decision[8] dated April 27, 2012, the RTC convicted Cuico of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, finding the accused, EVELYN ABADINES CUICO, guilty beyond reasonable doubt of violation of Section 12, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act), she is hereby sentenced to suffer the penalty of imprisonment

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[6] Id. at 85-86.

[7] Id. at 86-87.

[8] Supra note 4.

for a period of ONE (1) YEAR as minimum to TWO (2) YEARS as MAXIMUM, and to pay a FINE in the amount of P20,000.00.

x x x x

SO ORDERED.[9]

In adjudging Cuico guilty, the RTC relied on the testimony of PO3 Edmund Tiempo (PO3 Tiempo) as it found the same to be natural, reasonable, and probable.[10] Moreover, the RTC noted that nothing has been shown to have motivated PO3 Tiempo to make up a story or falsely implicate Cuico of any crime. It found PO3 Tiempo's testimony of more weight and substance as compared to Cuico's whose defense of denial was held to be inherently weak.[11] The RTC added:

The Court also agrees with PO[3] Tiempo and so holds that the subject syringes were used and intended to be used for injection of Nalbuphine Hydrochloride, a dangerous drug. Seven (7) of those were removed from their seals while the rest (17 pieces) were still sealed. Of course, syringes can also be used for the injection of legitimate medicines but in this case, the possession of the accused of the subject syringes does not appear to be for any lawful purpose.[12]

Moreover, the RTC explained that it was convicting Cuico for there was no reason to doubt the identities of the syringes and empty ampoules of Nalbuphine Hydrochloride presented by the prosecution as the ones which were recovered from her.[13] The RTC further opined that the failure of the police officers to subject the seized items to forensic examination was not a bar to Cuico's conviction. The RTC explained:

Considering that the ampoules of Nubain were empty when recovered according to PO[3] Tiempo, a condition which can be very conspicuous from the ampoules themselves compared to other drug

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[9] *Rollo*, p. 66.

[10] Id. at 63.

[11] Id.

[12] Id. at 63-64.

[13] Id. at 64-65.

paraphernalia where the presence or absence of traces of illegal substances may not be visible to the naked eye, **there seems to be no need to submit them and the syringes to a laboratory examination**. Besides, as already mentioned above, seventeen (17) pieces of the syringes were still in their seals.

In other words, the foregoing evidence of the prosecution proves substantial compliance with the requirements of the chain [of] custody rule and in the preservation and disposition of drug paraphernalia.[14] (Emphasis supplied)

Cuico was thus convicted by the RTC. Aggrieved, she filed an appeal to the CA.

Ruling of the CA

In the questioned Decision[15] dated October 28, 2016, the CA affirmed the RTC's conviction of Cuico. It elucidated:

For a successful prosecution of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II, R.A. No. 9165, the following elements must be established: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

In the instant case, the prosecution has sufficiently established that accused-appellant was in possession of drugs paraphernalia consisting of twenty-four (24) disposable syringes, and three empty ampoules of *nubain*, and that the latter was not authorized by law to do so.[16]

The CA further explained that the integrity and evidentiary value of the drug paraphernalia were dutifully preserved despite non-compliance with Section 21, RA 9165. The CA thus affirmed her conviction.

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[14] Id. at 65.

[15] Supra note 2.

[16] *Rollo*, p. 89.

Cuico sought reconsideration of the said Decision, but the same was denied by the CA in a Resolution[17] dated May 15, 2017.

Hence, the instant petition.

Issue

For resolution of the Court is the issue of whether the CA erred in affirming the conviction of Cuico.

The Court's Ruling

The petition is meritorious. The prosecution was unable to prove Cuico's guilt beyond 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."[18] 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*:[19]

> 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 the Court in *Mangubat, et al. v. Sandiganbayan, et al.*, "[u]ntil a promulgation of final conviction is made, this constitutional mandate

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[17] Id. at 103-104.

[18] *Polangcos v. People*, G.R. No. 239866, September 11, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65740>.

[19] Id.

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. (Emphasis supplied)

In particular, in cases involving dangerous drugs, in order to hurdle the constitutional presumption of innocence, the prosecution has the burden to prove compliance with the chain of custody requirements under Section 21, Article II of RA 9165, to wit: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and **(3) the seized drugs or drug paraphernalia must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination**.[20]

Strict compliance with the foregoing requirements is necessary in protecting the integrity and identity of the *corpus delicti*, ***without which the crime of*** *the illegal sale, or* ***illegal possession*** *of dangerous drugs or* ***drug paraphernalia cannot be proved beyond reasonable doubt***.[21] In other words, non-compliance

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[20] *People v. Dela Cruz*, G.R. No. 234151, December 5, 2018, 888 SCRA 604, 618-619.

[21] See *People v. Que*, G.R. No. 212994, January 31, 2018, 853 SCRA 487.

with Section 21 is tantamount to a failure to establish an essential element of the crime, and will therefore engender the acquittal of the accused.[22]

Thus, in the cases of *People v. Jimenez*,[23] *People v. Malazo*,[24] *People v. Pantallano*,[25] *People v. Sampa*,[26] and *People v. Claudel*,[27] the Court acquitted the respective accused therein, on reasonable doubt, because the police officers failed to comply with all of the foregoing requirements of Section 21. Following the foregoing cases, Cuico should perforce be acquitted because the police officers in this case failed to comply with the mandatory requirements of Section 21.

Specifically, **the police officers should have submitted the drug paraphernalia for forensic examination**, and the CA erred in saying otherwise. The CA explained:

> On the non-submission of the emptied syringes and ampules of *nubain* for laboratory examination, PO3 Tiempo adequately explained the use of said items as drug paraphernalia for injecting *nubain*. Hence there is no need to further subject them to laboratory examination in order to find traces of any illegal substance as the possession itself of said items is the punishable act.[28]

While it is true that Section 12 of RA 9165 punishes the possession of drug paraphernalia, it does not mean that forensic testing may completely be dispensed with. Section 11 of RA 9165, for instance, also punishes the possession of dangerous

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[22] *People v. Dela Cruz*, G.R. No. 205821, October 1, 2014, 737 SCRA 486, 499.

[23] G.R. No. 230721, October 15, 2018, 883 SCRA 263.

[24] G.R. No. 223713, January 7, 2019, 893 SCRA 57.

[25] G.R. No. 233800, March 6, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65009>.

[26] G.R. No. 242160, July 8, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65516>.

[27] G.R. No. 219852, April 3, 2019, 90 SCRA 1.

[28] *Rollo*, p. 93.

drugs, but it must first be proven that what the accused possessed was indeed dangerous drugs. In prosecutions involving Section 12 of RA 9165, forensic testing should thus still be done, especially in cases like the present case where the allegation is that one of the syringes was **used** to inject *nubain* and there were also confiscated empty bottles which could be confirmed to have contained *nubain* through forensic testing. This must be so, for every criminal charge must be proved by the prosecution **beyond reasonable doubt**. The fact that the confiscated items *may* be used as drug paraphernalia is not enough to establish a person's guilt and overcome the presumption of innocence. In this connection, Section 21 (2) of RA 9165 is unequivocal in its requirement:

> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, **as well as instruments/ paraphernalia and/or laboratory equipment**, the same **shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination**. (Emphasis and underscoring supplied)

The Implementing Rules and Regulations of RA 9165 is just as clear:

> SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> x x x x
>
> (b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, **as well as instruments/ paraphernalia** and/or laboratory equipment, the same **shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination**; (Emphasis and underscoring supplied)

In *People v. Taboy*,[29] one of the reasons cited by the Court in ruling that the charge of illegal possession of drug paraphernalia could not prosper was that "there was no indication that [the police officer] properly turned over the alleged paraphernalia to the crime laboratory, as the request for laboratory examination pertained only to the seized drug from accused-appellant."[30] Similarly, in *Derilo v. People*,[31] the Court ratiocinated:

> The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12 of RA No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia *fit or intended* for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.
>
> In the present case, there is no evidence showing that the aluminum foil, tube, and lighters found in the petitioner's house were fit or intended for introducing any dangerous drug into the body. *The prosecution did not bother to show that there were traces of shabu on any of these alleged drug paraphernalia. In fact, it appears that the only evidence that the prosecution offered to prove this charge is the existence of the seized items* by themselves.
>
> **For the prosecution's failure to prove that the items seized were intended to be used as drug paraphernalia, the petitioner must also be acquitted of the charge under Section 12 of RA No. 9165.** *Indeed, we cannot convict the petitioner for possession of drug paraphernalia when it was not proven beyond reasonable doubt that these items were used or intended to be used as drug paraphernalia*.[32]
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> (Emphasis and underscoring in the original; italics supplied)

To stress, while the present case involves mere possession of drug paraphernalia and not dangerous drugs, the quantum

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[29] G.R. No. 223515, June 25, 2018, 868 SCRA 82.

[30] Id. at 98.

[31] G.R. No. 190466, April 18, 2016, 789 SCRA 517.

[32] Id. at 532.

of evidence required remains the same, *i.e.*, proof beyond reasonable doubt. The requirement of testing is, as it should be, mandatory for prosecutions under Section 12 mostly involve the possession of ordinary household items such as foils, lighters, or in this case, syringes. Without a laboratory examination of the bottles and syringes confirming traces of illegal substances, there exists sufficient and reasonable ground to believe, consistent with the presumption of innocence, that the confiscated items were possessed for lawful purposes.

In light of the foregoing, the Court acquits Cuico of the charge against her.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated October 28, 2016 and Resolution dated May 15, 2017 of the Court of Appeals in CA-G.R. CEB-CR No. 01927 are hereby **REVERSED** and **SET ASIDE**. Let an entry of final judgment be issued immediately.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 234405. December 9, 2020]

MARTIN N. LIM, JR., *Petitioner, v.* **MARIA CONCEPCION D. LINTAG,** *Respondent*.

APPEARANCES OF COUNSEL

Solo V. Tive for petitioner.
Gregorio M. Nunag, Jr. for respondent.

D E C I S I O N

PERALTA, *C.J.*:

On appeal is the May 18, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CV No. 104923 which affirmed the March 20, 2015 Decision[2] of the Regional Trial Court (*RTC*), Branch 148, Makati City, in Criminal Case Nos. 09-3335 and 09-3336, finding Martin N. Lim (*petitioner*) civilly liable to Maria Concepcion D. Lintag (*Lintag*).

On October 30, 2009, two (2) separate Informations for estafa were filed against petitioner, *viz.*:

Information dated October 30, 2009 in Criminal Case No. 09-3335 for estafa under Article 315(1)(b) of the RPC

On the 9th day of December 2008, in the [C]ity of Makati, the Philippines, the accused being the sales agent of New San Jose Builders, Inc. (NSJBI), received in trust from Maria Concepcion D. Lintag, a BPI Family Savings Bank check no. 0478253 in the amount of P158,344.48 as payment for the expenses to be incurred in the transfer of the unit purchased by the complainant from NSJBI and with the

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[1] Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), with Associate Justices Celia C. Librea-Leagogo and Pedro B. Corales, concurring; *rollo*, pp. 25-52.

[2] Records, Vol. 2, pp. 493-514.

corresponding obligation on the part of the accused to immediately remit/turn over the check to NSJBI, but the accused[,] far from complying with his obligation, with intent to defraud and with unfaithfulness and grave abuse of confidence encashed the check, and thereafter, accused did then and there willfully, unlawfully, and feloniously misappropriate, misapply, and convert the proceeds of the check to his own personal use and benefit, and the accused, despite repeated demands made by [the] complainant, failed and refused and still fails and refuses to return to the complainant or to remit/turn over the amount of P158,344.48 to New San Jose Builders, Inc., to the damage and prejudice of Maria Concepcion D. Lintag.

CONTRARY TO LAW.[3]

Information dated October 30, 2009 in Criminal Case No. 09-3336 for estafa under Article 315(2) (a) in relation to Article 172 of the RPC:

On the 16th day of January 2009, in the [C]ity of Makati, the Philippines, accused, being the sales agent of New San Jose Builders, Inc. (NSJBI), received from Maria Concepcion D. Lintag BPI Family Savings Bank check no. 0478252 in the amount of P1,141,655.52, which is a commercial document, as partial payment for the condominium unit purchased from NSJBI, with the corresponding obligation on the part of the accused to deliver the check to NSJBI, the payee thereof, but the accused instead erased the words ''New San Jose Builders, Inc." and wrote the word "CASH" as payee, and thereafter affixed the customary signature of Ma. Concepcion D. Lintag above the said word and accused, once he had accomplished the same, encashed the check to the drawee bank, accused knowing very well that the complainant did not participate or authorize the accused to change the payee's name and sign on her behalf in view of such falsification, accused was able to encash the check in the amount of P1,141,655.52 and received the proceeds thereof, to the damage and prejudice of Maria Concepcion D. Lintag.

CONTRARY TO LAW.[4]

Petitioner pleaded "not guilty" upon arraignment.[5]

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[3] Records, Vol. 1, p. 2.

[4] *Id.* at 6.

[5] *Id.* at 115.

Trial ensued and the succeeding facts were established.

Lintag purchased a condominium unit from New San Jose Builders, Inc. (NSJBI) for the total contract price of Two Million Four Hundred Thousand Pesos (₱2,400,000.00). The payment scheme was on a monthly basis and Lintag hands check payments to petitioner, a sales agent, who then remits it to NSJBI.

On November 27, 2008, Lintag issued check no. 0478521 which was drawn from her checking account with BPI Family Savings Bank. The check, dated January 16, 2009, was payable to the order of *New San Jose Builders, Inc.*, for the amount of One Million Three Hundred Thousand Pesos (₱1,300,000.00). Petitioner issued a NSJBI acknowledgment receipt, with control no. 12802, dated November 27, 2008.

On December 9, 2008, Lintag once again met with petitioner to replace check no. 0478521 after the latter made representations that NSJBI wanted Lintag to issue two different checks — one check for partial payment of the condominium unit, and the other to cover expenses for transfer of unit under Lintag and her husband's names. Consequently, Lintag issued two crossed-checks dated January 16, 2009. Check no. 0478252, was issued as partial payment for the unit and was payable to *New San Jose Builders, Inc.*, for the amount of ₱1,141,655.52. The other one, check no. 0478253, was issued to cover expenses for transfer and was payable to *CASH*, for the amount of ₱158,344.48. Petitioner received the checks and placed them inside his clutch bag, and then handed another NSJBI acknowledgment receipt with control no. 12803.

On his way home, petitioner was allegedly accosted by two unidentified men who were armed with deadly weapons. The men grabbed petitioner's clutch bag and immediately absconded, taking the checks with them.

Petitioner, however, failed to inform Lintag and NSJBI that the checks were stolen. Lintag testified that she and petitioner communicated on several occasions, through text messages or personal interactions, to finalize the purchase of the unit. Lintag

stated that, on January 8, 2009, petitioner even reminded her to ensure that her accounts had sufficient funds.

On February 6, 2009, Lintag learned that her current account with BPI had been credited for the checks, but not as payment to NSJBI. She also discovered that check no. 0478252 had been tampered with when the payee was changed from *New San Jose Builders, Inc.* to *CASH*. It was also only after such discovery that petitioner revealed the robbery incident to Lintag. Aggrieved Lintag filed a complaint for estafa with abuse of confidence, under Article 315 (1) (b), and estafa through falsification of commercial documents, under Article 315 (2) (a), against petitioner.

On March 20, 2015, the RTC rendered a Decision,[6] acquitting petitioner from estafa, but holding him civilly liable, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt, accused **Martin N. Lim, Jr.** is hereby **ACQUITTED on Criminal Case Nos. 09-3335 and 09-3336**.
>
> Nevertheless, Accused Martin N. Lim[, Jr.] is held civilly liable to the private complainant and is hereby ordered to pay the latter the following:
>
> 1. Nominal Damages in the amount of P200,000.00
> 2. Moral Damages in the amount of P200,000.00
> 3. Attorney's fees in the amount of P100,000.00
> 4. Cost of Suit
>
> **SO ORDERED.**[7]

The RTC Decision states that the following elements must be proven beyond reasonable doubt in prosecuting for the crime of estafa through misappropriation or conversion under paragraph (1) (b), Article 315 of the Revised Penal Code:

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[6] Records, Vol. 2, pp. 493-514.

[7] *Id.* at 514.

(1) that the money, good or other personal property is received by the offender in trust, of on commission, of for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
(2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;
(3) that such misappropriation or conversion or denial is to the prejudice of another; and
(4) that there is demand made by the offended party on the offender.[8]

The RTC found that the prosecution failed to prove the first and second elements of the crime charged. The first element necessitates material or physical, *and* juridical possession of the thing received. As stated by the RTC, petitioner only had material or physical possession of the checks because he received them not "as agent of [Lintag]" but as an employee of NSJBI.

Misappropriation was also wanting because there was no moral certainty that petitioner received the proceeds of the checks. Respondent alleged that the checks were crossed or for deposit only yet, she did not present any proof as to whose accounts the checks were deposited.

In the end, the RTC only found petitioner civilly liable for failing to report the robbery incident to Lintag or NSJBI, which could have averted the unauthorized encashment of the checks.

On April 23, 2015, petitioner filed an appeal before the CA. Petitioner averred that his civil liability had no sufficient basis as he was not the perpetrator of the crimes charged.

On May 18, 2017, the CA rendered the assailed Decision, the dispositive portion of which reads:

The Decision dated March 20, 2015 is AFFIRMED with MODIFICATION, AWARDING P1,300,000.00 as actual damages

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[8] *Id.* at 509-510, citing *Serona v. Hon. Court of Appeals, et al.*, G.R. No. 130423, November 18, 2012 (Unreported).

(representing the total value of BPI Family Savings Bank Check Nos. 0478252 and 0478253), P200,000.00 as moral damages, P30,000.00 as exemplary damages, and P500,000.00 as attorney's fees. The award of P200,000.00 as nominal damages is DELETED.[9]

On June 16, 2017, petitioner filed his Motion for Reconsideration, but the same was denied in a Resolution[10] dated September 6, 2017.

Thus, the present petition.

Petitioner submits the following assignment of error:

> Specifically, the question here is whether or not it is proper for the Court of Appeals, following the trial court, to award a huge money judgment to the private complainant despite the findings that:
>
> (a) The trial court did not find the accused to have committed the crimes charged or profited therefrom.
>
> (b) There is no preponderance of evidence in these cases establishing that accused's acts caused the loss and damage to the private complainant.
>
> (c) The rules and jurisprudence are clear that, if there is no basis to charge the accused, then he has no criminal liability; it follows that he should also have no civil liability.[11]

The only issue to be resolved before the Court is whether or not Lim is liable for civil damages.

The Court answers in the affirmative.

Petitioner maintains that there is no basis for civil liability because he was found innocent of the crime charged. Such argument must fail. It is entrenched in jurisprudence, that the extinction of penal action does not carry with it the extinction of civil action where (a) the acquittal is based on reasonable doubt as only a preponderance of evidence is required; (b) the

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[9] *Rollo*, p. 53.

[10] *Id.* at 62.

[11] *Id.* at 14.

court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[12]

Here, the RTC acquitted petitioner on ground of reasonable doubt because the prosecution failed to submit sufficient evidence that petitioner misappropriated the checks, thus:

> x x x [T]he Court notes that the two checks were admittedly crossed checks or for deposit only which meant that before it could be credited to a party, it had to undergo the standard bank clearing process. No paper trail was presented to establish as to whose account the said BPI checks were deposited or credited. No BPI representative was presented to testify on the process conducted before the said checks were cleared and appropriated in order to determine to whose account the proceeds of the checks went. Thus, the prosecution failed to establish with moral certainty that the proceeds of the subject checks went to the accused or that he misappropriated the same.[13]

The RTC, however, held petitioner civilly liable for failing to report the alleged robbery incident. On appeal, the CA modified the civil liability by increasing the damages due after determining that the proximate cause for Lintag's financial damage is the failure to report the robbery incident. The Court now affirms but modifies the award of damages of the CA.

The lower courts duly established that Lintag suffered financial damage when petitioner failed to deliver the checks to NSJBI. As mentioned, the RTC and the CA attributed said failure to the robbery incident. The Court, however, refuses to believe the veracity of the robbery incident but agrees with the lower courts that petitioner employed dishonesty in his dealings with Lintag.

The robbery incident was a matter of affirmative defense which the petitioner had the duty to prove with the quantum of evidence required by law.[14] Since the civil liability is all that

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[12] *Chua v. People*, G.R. No. 195248, November 22, 2017.

[13] Records, Vol. 2, p. 511.

[14] *People v. Librero*, 395 Phil. 425, 436 (2000).

is left to be determined, petitioner had the burden to prove his defense by preponderance of evidence, which is the more convincing evidence to the court as worthy of belief than that offered in opposition thereto.[15] Section 1, Rule 133 of the Rules of Court provides:

> Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

A perusal of the records would disclose that the robbery incident was unsupported and uncorroborated. The witness of petitioner was not present during the alleged robbery.[16] Petitioner also stated in his Judicial Affidavit[17] that he actually knew who caused the encashment of the checks, to wit:

> Q5: What is your work prior to being as *(sic)* salesman of New San Jose Builders?
>
> A: I used to be an owner of a business, Madelcor International Corporation ("Madelcor," for brevity), which is engaged in installation of PABX microwave communications equipments *(sic)*.
>
> Q6: What happened to that business?
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> A: The business went bankrupt in 2006-2007 when my parents swindled me and took the business away from me. Then, the personal

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[15] *Beltran v. Villarosa*, 603 Phil. 279, 289 (2009).

[16] TSN, June 25, 2014, pp. 16-17.

[17] Records, Vol. 2, pp. 595-601.

and institutional creditors of Madelcor run *(sic)* after me for the corporate liabilities, which reached to a total amount of more than Five Million Pesos (P5,000,000.00).

Q7: What did you do after getting broke?

A: I started all over again. That is why, I worked with New San Jose Builders as a salesman.

xxxx

Q37: Did you inform Ms. Lintag about the incident?

A: I did not inform Ms. Lintag right away.

Q38: Why?

A: Sir I have several reasons. I am terribly afraid that she will not believe my story and trust me anymore, and she will report the problem to the company and discontinue with the sales transactions. That way, I will lose my job. I thought of admitting and paying the civil obligation of the checks to Ms. Lintag. **Anyway, the checks would be considered as payment to my *Madelcor creditors who were responsible for the incident***. Furthermore, I estimated that only the second check, which was paid to "CASH" in the amount of P158,344.48, will be the damage of Ms. Lintag. I thought that I can pay that amount with my sales commission from the company.[18] (Emphasis supplied)

Petitioner's passive response to the alleged robbery incident and his failure to file a complaint against his Madelcor creditors after learning that the proceeds of the checks allegedly ended up in their hands seem suspect.

Thus, the preponderance of evidence is considered in favor of Lintag as petitioner failed to support his affirmative defense with evidence that could have justified or excused his failure to deliver the checks to NSJBI.

Incidentally, petitioner's answer to question 38, wherein he stated that "*I thought I can pay that amount with my sales commission from the company,*" is sufficient proof and admission

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[18] *Id.* at 596-599.

that he was a sales agent of NSJBI and he received sales commissions from NSJBI. Such fact was also duly proven during trial.

Jurisprudence has consistently provided that an agent has material and juridical possession of the thing received because he can assert, as against his own principal, an independent, autonomous right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault.[19] This only means that as an agent of NSJBI, petitioner had both material and juridical possession of the checks.

Absent any plausible defense, the Court holds that petitioner was unable to overcome the burden and holds him civilly liable. The Court affirms the award of actual damages in the amount of ₱1,300,000.00 as this has been duly proven during trial. The total amount of damages shall also earn interest at the legal rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

The award of moral damages, exemplary damages and attorney's fees are, however, deleted for lack of sufficient basis. In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like.[20] Exemplary damages, on the other hand, is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages.[21] Since Lintag failed to establish her claim for moral damages, the award of exemplary damages also cannot stand.

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[19] *Benabaye v. People*, 755 Phil. 144, 156 (2015).

[20] *Espino v. Spouses Bulut*, 664 Phil. 702, 710 (2011).

[21] *Villanueva v. Court of Appeals*, 536 Phil. 404, 412 (2006).

WHEREFORE, the petition is **DENIED**. The May 18, 2017 Decision and the September 6, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 104923 are hereby **AFFIRMED with MODIFICATIONS**. Accordingly, petitioner Martin N. Lim, Jr. is **ORDERED** to **PAY** the amount of ₱1,300,000.00 as actual damages subject to six percent (6%) *per annum* interest rate from the date of finality of this decision until fully paid. The award of moral damages, exemplary damages and attorney's fees are **DELETED**.

SO ORDERED.

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

FIRST DIVISION[*]

[G.R. No. 237129. December 9, 2020]

OLIVER B. FELIX, *Petitioner, v.* **JULITO D. VITRIOLO,** *Respondent.*

APPEARANCES OF COUNSEL

Cappellan & Associates Law Office for respondent.
Arnold V. Guerrero, collaborating counsel for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated August 17, 2017 and the Resolution[3] dated January 29, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 149063 which modified the Joint Resolution of the Ombudsman and imposed upon Julito D. Vitriolo the penalty of suspension for a period of 30 days for violation of Section 5 (a) of Republic Act No. (R.A.) 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

Facts of the Case

Based on the records, in September 1996, Pamantasan ng Lungsod ng Maynila (PLM) and the National College of Physical

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[*] **REVISION**: Third Division changed to First Division.

[1] *Rollo,* pp. 3-30.

[2] Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court), with the concurrence of Associate Justices Apolinario D. Bruselas Jr. and Leoncia R. Dimagiba; *id.* at 33-60.

[3] Penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court), with the concurrence of Associate Justices Jose C. Reyes Jr. (former Member of this Court) and Apolinario D. Bruselas; id. at 76-85.

Education (NCPE) entered into a Memorandum of Agreement (MOA) for the creation of a physical education program for undergraduate and graduate students.[4] However, on September 29, 2003, the Securities and Exchange Commission (SEC) revoked the registration of NCPE for non-compliance with reportorial requirements. Nevertheless, the MOA was renewed in September 2005. On September 28, 2007, then PLM President Adel Tamano, suspended the PLM-NCPE MOA based on the Audit Observation Memorandum of the Commission on Audit (COA) stating that the program was prejudicial to the interests of PLM. The suspension of the MOA took effect in September 2008.[5]

On October 21, 2009, because of the suspension of the MOA and upon urging of his colleagues who were pursuing graduate studies in NCPE, Oliver Felix (Felix), former faculty member of the College of Physical Education at the PLM, inquired from the different offices of the Commission on Higher Education (CHED) whether NCPE was permitted to grant undergraduate and graduate degrees in physical education. He found out that NCPE is not included in the list of CHED-recognized higher education institutions.[6]

Because of his discovery of NCPE's status and fearing that there are other anomalies surrounding the programs offered by the PLM aside from the suspended PLM-NCPE MOA, Felix sent a letter dated May 21, 2010 to Atty. Julito D. Vitriolo (Vitriolo), Executive Director of CHED. Felix also requested from Vitriolo a certification that PLM is not authorized to implement the Expanded Tertiary Education Equivalency Accreditation Program (ETEEAP), among others. According to Felix, Vitriolo obstructed the issuance of non-deputation to implement the ETEEAP notwithstanding that Dr. Felizardo Y. Francisco, Director of the CHED's Office of Programs and Standards (OPS), has already processed the same. Felix believed

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[4] Id. at 34.

[5] Id. at 34-35.

[6] Id. at 87-88.

that the inaction of Vitriolo on his request was due to the deal that Vitriolo and PLM's Legal Counsel, Atty. Gladys France Palarca (Atty. Palarca), forged about the non-issuance of citation against PLM.[7]

Felix sent another letter on June 29, 2010 reiterating his allegations concerning the diploma-mill operations of PLM but Vitriolo did not allegedly act on these letters even with accompanying evidence in support of the assertions.[8]

Meanwhile, on June 1, 2010, a meeting was held between Vitriolo and Atty. Palarca, where the former allegedly "made verbal representations that Transcript of Records could be issued to the graduates under the PLM-NCPE MOA based on vested rights."[9]

Because of the inaction of Vitriolo, Felix filed the first Complaint-Affidavit (first complaint) on May 19, 2011 against the former. Felix claimed that the collusion between Vitriolo and PLM resulted in the continuation of the diploma-mill operations of PLM and the issuance of transcript of records and diplomas to students and graduates under the PLM-NCPE MOA.[10]

The Office of the Ombudsman treated the first complaint as one for mediation. At the mediation conference, Felix and Vitriolo's representative entered into an agreement whereby the CHED through Vitriolo, promised to act on the May 21, 2010 and June 29, 2010 letters of Felix within 30 days and issue the necessary citations and sanctions to PLM for it to cease and desist all illegal academic programs. It was also stated in the agreement that if Vitriolo fails to do the same, Felix will revive the complaint against him.[11]

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[7] Id. at 89-90.

[8] Id.

[9] Id. at 88.

[10] Id. at 91.

[11] Id. at 92.

A month later or on September 9, 2011, Felix expressed to Vitriolo his expectation that the latter and CHED would comply with the agreement. In a reply dated September 22, 2011, Vitriolo reported that after the mediation session, he directed the OPS and the Office of the State Universities and Colleges (SUCs) and Local Universities and Colleges (LUCs) Concerns to investigate and gather pertinent evidence regarding the concerns contained in Felix's letters.[12]

Three years after the first complaint was filed and frustrated of Vitriolo's failure to investigate his assertions about the diploma-mill operations of PLM and unwillingness to issue the necessary sanctions, Felix sent another letter dated June 30, 2014 stating that Vitriolo tolerated the illegal diploma-mill operations of PLM. Felix also warned Vitriolo that he will file another complaint against him. Vitriolo sent a reply dated July 17, 2014 reporting that the one assigned to investigate the programs of PLM retired without turning over his findings and he asked another official to provide updates on what has been accomplished concerning the alleged diploma-mill operations of PLM.[13]

Unsatisfied with the explanation of Vitriolo, Felix filed a second complaint-affidavit on June 30, 2015 for grave misconduct, gross neglect of duty, incompetence, inefficiency in the performance of official duties, and violation of Section 5 (a), (c), and (d) of Republic Act (R.A.) No. 6713.[14]

In his counter-affidavit, Vitriolo averred that he was not remiss in his duty to investigate the complaints of Felix. In fact, Vitriolo enumerated the following actions that were undertaken by his Office, to wit: (1) referral sheet dated July 12, 2010 forwarding to the Office of the SUCs and LUCs the complaint for review; (2) instruction dated September 3, 2010 to the Office of the SUCs and LUCs to provide COA the status of PLM-NCPE

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[12] Id. at 92-93.

[13] Id. at 93.

[14] Id.

Program and the Open University Distance Learning Program; (3) follow up on August 15, 2011 with the Office of the SUCs and LUCs the request of complainant; and (4) the September 19, 2011 letters to Director Sinforoso Birung of the OPS, Director Lily Freida Macabangun-Milla of the Office of the SUCs and LUCs Concerns, and Director Catherine Castañeda of the CHED-NCR all concerning complainant's assertions.[15] Vitriolo added that after sending a reply dated July 11, 2014 to Felix's June 30, 2014 letter, he referred the matter to the OPS and on August 3, 2015, the OPS recommended to refer the matter to the CHED-NCR.[16]

Vitriolo argued that to be able to make him liable for grave offenses under the civil service rules, bad faith must attend the acts complained of because reliance on mere allegations, conjectures and oppositions is not enough. Vitriolo also denied having forged an illicit deal with Atty. Palarca.[17]

Ruling of the Ombudsman

On December 29, 2016, the Ombudsman issued its Joint Resolution[18] finding Vitriolo liable for grave misconduct, gross neglect of duty, inefficiency, incompetence, and violation of Section 5 (a), (c), and (d) of R.A. 6713 and meted upon him the penalty of dismissal from service, with the corresponding accessory penalties.[19]

The Ombudsman found that Vitriolo only responded to Felix's 2010 letters on July 11, 2014 or more than four years therefrom.[20] This is contrary to Section 5 (a) of R.A. 6713 requiring government officials to respond to letters and telegrams sent by the public within 15 days from receipt. Even if Vitriolo

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[15] Id. at 96.

[16] Id. at 96-97.

[17] Id. at 97.

[18] Id. at 86-113.

[19] Id. at 112.

[20] Id. at 105.

acted on the concerns of Felix, he never made known his actions to the latter. The Ombudsman also concluded that Vitriolo cannot escape his liability under Section 5 (c) and (d) of R.A. 6713 for failure to expeditiously process documents and papers in relation to the complaint filed by Felix and to act immediately on the public's personal transactions.[21]

The Ombudsman further noted that even after five years from the receipt of the letters or on August 3, 2015, Vitriolo was still making referrals to CHED officials for the investigation of Felix's concerns. Vitriolo was not able to explain such foot-dragging. According to the Ombudsman, the inaction of Vitriolo is not in accordance with Section 8 (e) of R.A. 7722, otherwise known as the "Higher Education Act of 1994" vesting upon CHED the duty to "monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure."[22] As Executive Director of CHED, Vitriolo is tasked to act as a clearing house for all communications received from internal and external sources as well as provide advice to and direct or assist CHED clients in addressing their various public service demands/needs.[23]

The Ombudsman is convinced that by Vitriolo's inattention to communications addressed to him, he showed not even slightest care regarding requests from and concerns of the public. The inaction of Vitriolo in investigating the alleged diploma-mill operations of PLM, coupled with his statement that PLM may release the transcript of records and diplomas of the graduates of the PLM-NCPE MOA based on vested rights, reeks of bad faith and tantamount to grave misconduct and gross neglect of duty.[24]

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[21] Id. at 106-107.

[22] Id. at 108.

[23] Id. at 109.

[24] Id.

Vitriolo moved for reconsideration that was denied in an Order[25] dated March 29, 2017.

Aggrieved, Vitriolo filed a Petition for Review to the CA.

Ruling of the Court of Appeals

In its Decision[26] dated August 17, 2017, the CA modified the decision of the Ombudsman and instead suspended Vitriolo for 30 days for violation of Section 5 (a) of R.A. 6713.

The CA agreed that Vitriolo indeed failed to promptly act on the letters dated May 21, 2010 and June 29, 2010 of Felix. Such inaction is a violation of Section 5 (a) of R.A. 6713.[27] However, the omission did not amount to gross neglect of duty that justifies the dismissal of Vitriolo from service.[28]

The CA is convinced that contrary to Felix's allegation, Vitriolo did not disregard the request for investigation and in fact referred the matter to the appropriate offices of CHED.[29] Hence, as observed by the CA, the only infraction committed by Vitriolo was his failure to reply to the letters and to communicate to Felix specific actions he has taken or to be taken by his office.[30]

The CA imposed the penalty of 30-day suspension on Vitriolo based on Rule 10, Section 46 (F) (12) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) which penalizes light offenses including failure to act promptly on letters and requests within 15 days from receipt thereof. According to the said provision, a light offense is punishable by reprimand for the first offense; suspension of one day to 30 days for the second offense; and dismissal from service for the

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[25] Id. at 114-119.

[26] Supra note 2.

[27] *Rollo*, p. 51.

[28] Id. at 57.

[29] Id. at 52-53.

[30] Id.

third offense. Considering that Vitriolo failed to respond to two letters dated May 21, 2010 and June 29, 2010 of Felix, then the penalty of 30 days suspension was imposed on him.[31]

On the issue of the supposed opinion of Vitriolo that transcripts of records may be issued to the graduates of PLM-NCPE based on vested rights, the CA found that this cannot be used as basis for Vitriolo's liability for gross negligence and grave misconduct as found by the Ombudsman. In fact, even the Ombudsman acknowledged that graduates of the program before its suspension are entitled to their diplomas.[32]

Lastly, the CA noted that the issuance of necessary citations and sanctions to PLM and for PLM to cease and desist all its illegal academic programs fall within the function of the CHED and not specifically vested with the Office of the Executive Director. The Office of the Executive Director is merely a part and among the many offices of the CHED as a government agency.[33] Hence, the CA is convinced that Vitriolo acted in accordance with his functions as the Executive Director when he referred the subject matter of Felix's letters to the appropriate offices of CHED.[34]

Felix moved for reconsideration but the same was denied in a Resolution[35] dated January 29, 2018.

This time aggrieved, Felix filed this Petition for Review on *Certiorari*[36] reiterating Vitriolo's bad faith as well as gross neglect of duty in failing to respond to Felix's letters in 2010 which resulted in the continued operation of the illegal academic programs of PLM.[37] Specifically, Felix argues that no concrete

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[31] Id. at 54-55.

[32] Id. at 57.

[33] Id. at 58-59.

[34] Id. at 59.

[35] Supra note 3.

[36] *Rollo*, pp. 3-30.

[37] Id. at 21.

actions were taken by Vitriolo respecting the matters he raised in his letters other than his numerous referrals to officials of CHED. Felix also notes that Vitriolo failed to present any report coming from the CHED officials to whom the matters were referred to, hence, these are just cover-up measures to escape liability. He also questions the explanation of Vitriolo that the person assigned to investigate his concerns has retired from service without turning over the result of the investigation done. Hence, according to Felix, Vitriolo was guilty as well for violation of Section 5 (c) and (d) of R.A. 6713 for failure to act promptly and expeditiously on the matter raised before him.[38] Lastly, Felix reiterates that Vitriolo's liability cannot be limited to a mere failure to comply with Section 5 (a) of R.A. 6713, rather, the case was about the illegal programs of PLM and the failure of Vitriolo to investigate the matter.[39]

Vitriolo filed his Comment[40] on May 21, 2018 assailing the petition for being factual in nature and agreed with the CA that the only infraction committed by Vitriolo was his failure to reply promptly to the 2010 letters sent by Felix to his office. Vitriolo reiterates that the accusation of diploma-mill operations of PLM was never proven. The transcript of records and diplomas were issued to graduates prior to the suspension of the MOA.[41]

On November 21, 2018, Felix filed his Reply[42] reiterating his arguments in his petition for review on *certiorari*.

Issue

The issue in this case is whether the failure of Vitriolo to respond and act on the concern and letters of Felix constitute

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[38] Id. at 15-16.

[39] Id. at 21.

[40] Id. at 132-169.

[41] Id. at 62.

[42] Id. at 231-240.

a mere violation of Section 5 (a) of R.A. 6713 necessitating only a 30-day suspension.

Ruling of the Court

The petition is meritorious.

We agree with Felix that the transgression of Vitriolo in this case cannot be considered as a mere violation of Section 5 (a) of R.A. 6713 necessitating only the penalty of 30 days suspension.

While it is true that violation of Section 5 (a) of R.A. 6713 is considered as light offense under Rule 10, Section 50 (F) of RRACCS that is punishable by reprimand for the first offense, suspension of one to 30 days for the second offense, and dismissal from service for the third offense, nevertheless, the failure of Vitriolo to respond to the May 21, 2010 and June 29, 2010 letters of Felix and his inability to investigate the allegations of Felix concerning the diploma-mill operations of PLM cannot be lightly brushed aside because his omissions constitute gross neglect of duty.

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[43]

As Executive Director of CHED, Vitriolo serves as the head of the Commission Secretariat and is in charged with overseeing the overall implementation and operations of the CHED Central and Regional Offices. In addition, the Office of the Executive Director:

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[43] *Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013).

(a) Serves as clearinghouse for all communications received from internal and external sources;
(b) Coordinates the agenda items and provides secretariat support to the Chairperson, in collaboration with the commission secretary in the preparation and documentation of the following major meetings: Commission En Banc (CEB); Management Committee (ManCom); and the Quarterly National Directorate;
(c) Closely monitors all central and regional offices, making sure that all units are pursuing a common road map, consistent with the Commission's reform agenda and strategic plan;
(d) Implements and monitors the compliance of Central and Regional Offices with all CEB decisions and directives; and
(e) Provides advice to and directs or assists CHED clients in addressing their various public service demands/needs.[44]

Conformably with the foregoing duties and responsibilities of the Executive Director, Vitriolo's failure and unwillingness to investigate the alleged diploma-mill operations of PLM constitute gross neglect of duties. The letters of Felix containing pieces of evidence relative to the alleged diploma-mill operations of PLM, a higher-education institution under the supervision of CHED, is a serious allegation necessitating the attention of Vitriolo. Being a premier public educational institution funded by the City Government of Manila, any illegal programs implemented by the PLM, if true, would have an adverse effect not only to its students and graduates but also to the public in general because public funds are being used to finance the operations of the university.

Vitriolo cannot disown his gross negligence by stating that he has referred the matter to the other offices of CHED for investigation. This claim only highlights his lackadaisical attitude in dealing with the allegations of Felix. Based on records, Vitriolo only took notice of the May 21, 2010 and June 29, 2010 letters of Felix when the first complaint, which was treated by the Ombudsman as one for mediation, has already been filed. In the said conference, Vitriolo even entered into an agreement with Felix and promised to act on his allegations within 30

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[44] Retrieved at <https://ched.gov.ph/ched/official-organization-structure/office-executive-director/> on November 26, 2020.

days as well as to issue the necessary sanctions against PLM. However, three years from the time Felix filed the first complaint, there was still no update from Vitriolo regarding the result of the investigation, if indeed one was ordered.

Worse, in Vitriolo's reply dated July 11, 2014 to Felix's June 30, 2014 letter, he only gave the lame excuse that the one assigned for investigation has retired without turning over his findings. Vitriolo even admitted that as late as August 3, 2015, he was still making referrals for the investigation of the matter to different CHED offices. If Vitriolo truly ordered an investigation of the alleged diploma-mill operations of PLM and considering that five long years has passed since Felix first wrote the letters to Vitriolo regarding the matter, a definite finding should have already been arrived at.

What is apparent in Vitriolo's actions is that he did not take the allegations of Felix seriously. His flagrant and culpable refusal or unwillingness to perform his official duties could have allowed the continuation of PLM's illegal academic programs.

All told, Vitriolo's failure to reply to the two letters sent by Felix is not a simple violation of Section 5 (a) of R.A. No. 6713 but an omission that gave rise to a more serious problem of the possible continuation of the illegal programs and diploma-mill operations of PLM. Because of Vitriolo's gross neglect of duty, the investigation was not undertaken and the possible administrative liabilities of those involved were not determined.

WHEREFORE, the Decision dated August 17, 2017 and the Resolution dated January 29, 2018 of the Court of Appeals in CA-G.R. SP No. 149063 are hereby **REVERSED** and **SET ASIDE**. The Court finds respondent Julito D. Vitriolo **GUILTY** of gross neglect of duty and imposes upon him the penalty of **DISMISSAL** from service, with the corresponding accessory penalties.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 238347. December 9, 2020]

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., JOSE JOEL SEBASTIAN/ARLYN MCDONALD/ CAROLINE CAUSON, *Petitioners, v.* **MELVIN C. ANG,** *Respondent.*

[G.R. Nos. 238568-69. December 9, 2020]

MELVIN C. ANG, *Petitioner, v.* **INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., JOSE JOEL SEBASTIAN/ARLYN MCDONALD/CAROLINE CAUSON,** *Respondents.*

APPEARANCES OF COUNSEL

Jimeno Cope & David Law Offices for International Container Terminal Services, Inc., *et al.*

The Law Firm of Lucenario Domingo Rombaoa & Associates for Melvin C. Ang.

D E C I S I O N

GAERLAN, *J.*:

Before this Court are two consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Consolidated Decision[2] of the Court of Appeals (CA) in CA-G.R. SP Nos. 146550 and 146740 dated November 9, 2017, and its and Resolution[3] dated March 22, 2018, denying the motion for reconsideration thereof.

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[1] *Rollo* (G.R. Nos. 238568-69), pp. 9-47.

[2] Id. (G.R. No. 238347) at 53-89; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court) and concurred in by Associate Justices Mario V. Lopez (now a Member of this Court) and Pedro B. Corales.

[3] Id. at 111-112.

The Antecedent Facts

Melvin C. Ang (Ang) was employed by IBM Solution Delivery, Inc. as an I.T. Specialist. Sometime during the course of his employment, he was assigned at the International Container Terminal Services, Inc. (ICTSI) to develop a Business Planning and Consolidation System (SAP BPC), for the latter.[4] The SAP BPC software is intended to be used by ICTSI "to monitor and review the financial performance of its multi-billion dollar investments in subsidiaries and terminals worldwide."[5]

In November 2012, a month before the expiration of the contract between IBM and ICTSI, Ang received an informal job offer to join ICTSI as SAP BPC Administrator.[6]

On December 15, 2012, Ang resigned from IBM and joined ICTSI on January 7, 2013 as a part of the Financial Planning System Team.[7] Sometime in June 2013, Ang was designated as the over-all SAP BPC Administrator.[8] In September 2013, Ang was assigned to the ICTSI Consolidation Team, headed by Arlyn McDonald (McDonald).[9]

On February 22, 2014, Ang informed McDonald through a text message that he will be taking a leave of absence on February 28 and March 3, 2014. McDonald replied that they would talk about it the following day, and advised him to finish his work before going on a vacation.[10]

Ang took a vacation, as planned. When Ang reported to work on March 4, 2014,[11] he was served with an unsigned notice to

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[4] Id. at 56.

[5] Id. at 14.

[6] Id.

[7] Id. at 57.

[8] Id. at 58-59.

[9] Id. at 60.

[10] Id. at 63.

[11] Id.

explain dated March 3, 2014.[12] The notice placed Ang under preventive suspension for a period of 30 days, on account of these violations:

- You were absent without official leave from noontime of February 27, 2014 to date, especially since you are the only SAP BPC support during this critical stage of SAP BPC implementation/go live.
- You do not finish substantially all the assigned tasks by Arlyn McDonald and Caroline Causon to you within reasonable amount of time despite several warnings thereby resulting to the delay in the submissions of CFO reports by subsidiaries and completion of January 2014 consolidation.

x x x x

- You were requested to compare the balances submitted to Hyperion and SAP BPC of the subsidiaries for December 2013 and to this date, you cannot produce the comparison and the list of subsidiaries and the accounts with differences. We have requested the same tasks to be done by an OJT and the OJT was able to finish the said task in a matter of few days which proves your incompetence and insubordination.
- You do not give adequate support and instructions to SAP BOC users. You give vague answers to queries of users of SAP BPC which in turn resulted to several emails to clarify your instructions and wasting man-hours.
- Dishonesty in your representations. There were several times that we have asked you if the tasks were done and you have complied yes and when we checked, it wasn't really done.

x x x x

The totality of your actions constitutes serious misconduct, willful disobedience to the lawful orders of your superior in connection to your work (insubordination), and willful breach of trust reposed on you by the management x x x.[13]

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[12] Id. (G.R. Nos. 238568-69) at 158-159.

[13] Id. at 158-159.

On March 11, 2014, Ang submitted his response to the notice to explain.[14] In his response, Ang questioned the legitimacy of the notice as it was unsigned. Further, anent his absence, Ang justified that he sent a text message to his superior of his leave, but the latter did not reply, thus, he assumed that the same was approved. Besides, Ang claimed that he had completed his assigned tasks prior to taking a leave.[15] Ang argues that the errors encountered were attributable to the users' failure to use the proper template and not because of his negligence. Lastly, he confirms that there are a lot of remaining entities that are yet to be revised and uploaded to the system, but justifies these are not urgent matters and that he had committed to finish them after his vacation.[16]

On March 18, 2014, Ang received a call from the HR department of ICTSI inviting him to a hearing to discuss his alleged infractions. On March 20, 2014, the parties met as scheduled. On even date, Ang was served with a second letter of suspension, which is basically identical to the previous notice except that the new one is signed. Ang refused to receive the second letter.[17]

On April 4, 2014, when Ang reported back to work, he was informed by the guard to proceed to the Human Resources office. Ang was then instructed to attend an administrative hearing. In the hearing, the ICTSI HR Manager and other officials were in attendance. The parties discussed Ang's response to the notice to explain. Thereafter, Ang inquired whether he could proceed to his workstation but was told that he was still under the 30-day period of preventive suspension imposed by the second notice.[18]

On April 21, 2014, Ang reported to work, but was told by Atty. Alcaraz that his suspension had been extended. On June

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[14] Id. (G.R. No. 238347) at 65.

[15] Id. at 70.

[16] Id. (G.R. Nos. 238568-69) at 367.

[17] Id. (G.R. No. 238347) at 65.

[18] Id. at 64-65.

26, 2014, Ang received a Notice dated June 19, 2014, informing him of his dismissal.[19]

On September 23, 2014, Ang filed a Complaint[20] for illegal dismissal; non-payment of wages, service incentive leave, 13th month pay, separation pay; moral and exemplary damages; and attorney's fees, before the National Labor Relations Commission (NLRC). The complaint was filed against ICTSI and its officers — Jose Joel Sebastian, VP Controller; McDonald, Financial Reporting Director; and Caroline Causon, Financial Planning Director of the Corporate Controllership Group.[21]

Ang argues that he was immediately given regular status when he was hired by ICSTI in January 2013. He submits that he had performed all his assigned duties. With respect to his leave of absence, Ang avers that he had informed his superior, but the latter did not reply which he took as an approval of his leave. Finally, he argues that the second notice is similar to the first one and was issued merely to rectify the absence of the signature of an officer of ICTSI.[22]

ICTSI claims that its dismissal of Ang is valid as it complied with substantial and procedural due process. ICTSI submits that on various occasions, it called Ang's attention on account of his failure to perform the tasks assigned to him or of the discrepancies in his output. According to ICTSI, Ang failed to rectify these mistakes; instead, he merely tried to justify them through various excuses. As a result, the ICTSI's Financial Reporting Department, which Ang is part of, experienced a lot of difficulties and problems.[23] In addition, Ang took an unauthorized leave of absence during a crucial period; ICTSI stated Ang's attempt to complete his duties through emails while

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[19] Id. at 66; id. (G.R. Nos. 238568-69) at 171-175, 248-252.

[20] Id. (G.R. Nos. 238568-69) at 99-100.

[21] Id. (G.R. No. 238347) at 12.

[22] Id. at 63-65.

[23] Id. at 67-68.

on leave created problems for his department as he was the only assigned SAP BPC support at that time.[24]

ICTSI further submitted that contrary to Ang's submission, the second letter included new charges which were discovered after the first notice was sent. In view of Ang's failure to submit his answer to the second notice, and after the hearing conducted on April 4, 2014, ICTSI's HR department recommended Ang's dismissal on June 9, 2014, on account of the following: a) disregard of company policy on leave of absence, b) neglect of duties as SAP BPC administrator, and c) breach of trust as Assistant Manager in the Financial Reporting Department.[25]

On August 27, 2015, the Labor Arbiter (LA) rendered his Decision,[26] the dispositive portion of which reads:

> WHEREFORE, premises considered, the instant complaint is hereby dismissed for utter lack of merit.
>
> Other monetary claims are likewise dismissed for lack of basis in fact and in law.
>
> SO ORDERED.[27]

The LA held that ICTSI, pursuant to its managerial prerogative, has sufficient and valid reasons in terminating the services of Ang. Further, finding the ground relied upon by ICTSI to be valid, the LA dismissed Ang's imputation of bad faith and thus denied his claim for damages. Similarly, the LA found no basis to award Ang's monetary claims, holding that ICTSI established that it had already paid the same.[28]

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[24] Id. at 69.

[25] Id. at 71.

[26] Id. (G.R. Nos. 238568-69) at 292-310; rendered by Labor Arbiter Patricio P. Libo-on.

[27] Id. at 309-310.

[28] Id. at 308.

Ang appealed to the NLRC. In its Decision[29] dated February 29, 2016, the NLRC partially reversed the Decision of the LA, *viz.*:

> WHEREFORE, the appeal is hereby PARTLY GRANTED. The assailed decision is hereby SET ASIDE and a new one is entered. Respondent International Container Terminal Services, Inc. (ICTSI) is hereby ordered to pay complainant the following amounts:
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> 1. Full backwages from June 19, 2014 up to the finality of this decision;
> 2. Separation pay equivalent to one month pay for every year of service from January 2013 up to the finality of this decision;
> 3. Salaries from April 19, 2014 to June 18, 2014, corresponding to the period after the lapse of the preventive suspension;
> 4. Attorney's fees equivalent to 10% of the total awards.
>
> The attached computation shall form part of the dispositive part of this Decision.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[30]

The NLRC ruled that the evidence adduced by ICTSI are insufficient to establish that Ang was guilty of most of the acts imputed to him. The NLRC found the explanation offered by Ang in his emails satisfactory to dispel ICTSI's allegations. The NLRC held that while it agrees that Ang's unauthorized leave of absence is a misdemeanor, it however does not merit the penalty of dismissal.[31]

Moreover, the NLRC found that ICTSI failed to afford complainant of procedural due process. According to the NLRC, the records do not show that the complainant received the notice

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[29] Id. at 359-400; rendered by Bernardino B. Julve and concurred in by Presiding Commissioner Grace M. Venus.

[30] Id. at 399-400.

[31] Id. at 394-396.

of hearing; that while Ang was physically present in the hearing, it was not shown that he had been advised of his right to counsel; and, lastly, that Ang was deprived of access to his office laptop which he intended to use to show compliance with the orders of his superiors.[32]

Thus, the NLRC held that Ang's dismissal is illegal and as such entitled to separation pay in lieu of reinstatement, backwages, and attorney's fees. However, the NLRC denied Ang's other monetary claims for lack of sufficient factual and legal basis.[33]

Both parties moved for reconsideration of the NLRC's Decision. The NLRC resolved to deny both motions in its Resolution[34] dated May 23, 2016, but modified its earlier ruling in order to correct a typographical error, *viz.*:

> WHEREFORE, the separate motions filed by the parties are hereby DENIED for lack of merit. The Decision of this Commission is hereby AFFIRMED WITH MODIFICATION, to correct a typographical error. The order to pay separation pay to complainant equivalent to one month for every year of service should be reckoned from January 2014 and up to the finality of the Decision.
>
> SO RESOLVED.[35]

Both parties interposed their respective appeal via a special civil action for *certiorari* to the CA.

The CA's Decision

On November 9, 2017, the CA rendered the herein assailed Decision,[36] the *fallo* of which reads:

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[32] Id. at 398.

[33] Id. at 398-399.

[34] Id. at 444-448.

[35] Id. at 448.

[36] Id. (G.R. No. 238347) at 53-89.

ACCORDINGLY, the assailed Decision dated February 29, 2016 and Resolution dated May 23, 2016, are AFFIRMED with the following MODIFICATION:

1) The reckoning point for payment of Melvin Ang's separation pay equivalent to one month pay for every year of service shall be from January 7, 2013 up to the finality of this decision.

2) ICTSI is directed to pay Melvyn Carillo Ang his Service Incentive Leave pay equivalent to 5 days per year of service; and

3) The total monetary award is subject to interest of six (6%) percent per annum from finality of this judgment until fully paid.

SO ORDERED.[37]

Ang filed a Motion for Partial Reconsideration[38] praying that the CA order: full backwages reckoned from June 19, 2014, refund of the amount allegedly deducted for taxes purposes, and award attorney's fees of 10% of the monetary award.[39] ICTSI similarly filed a Motion for Reconsideration dated December 5, 2017. The CA denied both motions in its Resolution[40] dated March 22, 2018.

Thus, ICTSI filed the instant petition for review on *certiorari*,[41] docketed as G.R. No. 238347, raising the following grounds in support thereof:

(A)

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF FACT AND LAW IN AFFIRMING THAT THERE WAS NO BASIS FOR PETITIONER COMPANY TO DISMISS PRIVATE RESPONDENT;

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[37] Id. (G.R. Nos. 238568-69) at 88-89.

[38] Id. at 509-516.

[39] Id. at 516.

[40] Id. (G.R. No. 238347) at 111-112.

[41] Id. (G.R. Nos. 238568-69) at 9-47.

(B)

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF FACT AND LAW WHEN IT HELD THAT PRIVATE RESPONDENT WAS NOT AFFORDED PROCEDURAL DUE PROCESS;

(C)

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF FACT AND LAW WHEN IT RULED THAT THE RECKONING POINT OF PRIVATE RESPONDENT'S EMPLOYMENT IS FROM JANUARY 7, 2013 AND NOT JANUARY 2014;

(D)

THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF FACT AND LAW IN AFFIRMING THE MONETARY AWARD OF BACKWAGES, SEPARATION PAY, ATTORNEY'S FEES AND ADDING SERVICE INCENTIVE LEAVE TO THE PRIVATE RESPONDENT WITHOUT BASIS IN FACT AND LAW.[42]

Ang similarly interposed an appeal *via* petition for review on *certiorari*[43] under Rule 45 before this Court, docketed as G.R. Nos. 238568-69 attributing upon the CA the following errors:

FIRST. THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO AWARD PAYMENT OF BACKWAGES IN FAVOR OF PETITIONER MELVIN ANG DESPITE SUSTAINING THE FINDINGS OF THE NLRC THAT THE PETITIONER ANG WAS ILLEGALLY DISMISSED FROM HIS EMPLOYMENT;

SECOND. THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO INCLUDE IN THE DISPOSITIVE PORTION OF THE CONSOLIDATED DECISION THE AWARD OF ATTORNEY'S FEES DESPITE THE PRONOUNCEMENT IT MADE IN THE BODY OF THE CONSOLIDATED DECISION THAT INDEED PETITIONER ANG IS ENTITLED TO ATTORNEY'S FEES OF TEN PERCENT (10%) OF THE TOTAL MONETARY AWARD.[44]

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[42] Id. (G.R. No. 238347) at 22-23.

[43] Id. (G.R. Nos. 238568-69) at 49-70.

[44] Id. at 63-64.

The petitions were ordered consolidated by the Court in its Resolution[45] dated June 4, 2018.

ICTSI puts forth that contrary to the ruling of the NLRC and the CA, Ang's dismissal is warranted by the latter's unauthorized absences and gross and habitual neglect of duty that resulted in the loss of millions of pesos to the company; these as well gave grounds for the management to lose their trust and confidence upon Ang and justifies his dismissal from employment, particularly, as these grounds are supported by the evidence on record.[46]

On the other hand, Ang asserts that the emails presented by ICTSI as evidence are insufficient "to support with clear and substantial evidence their charges of incompetence, gross and habitual neglect of duties and willful disobedience."[47] With the CA's affirmation of the NLRC ruling that the dismissal is invalid, Ang interposed this appeal claiming that he is entitled to backwages and attorney's fees.

Simplified, the Court must resolve whether Ang's termination is valid, that is, whether he has been terminated for a just cause and has been of procedural due process; and whether his entitlement to monetary benefits and attorney's fees, is valid.

The Court's Ruling

The petitioner's dismissal is **valid**.

Foremost, while the issues raised are factual in nature and as such is beyond the province of a petition for review on *certiorari* under Rule 45, the Court is not proscribed from resolving these questions in the present case where the findings and conclusions of the labor arbiter are inconsistent with that of the NLRC and the CA, and where the CA's conclusion is contradicted by the evidence on record.[48]

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[45] Id. (G.R. No. 238347) at 122-124.

[46] Id. at 32-33.

[47] Id. at 193.

[48] *Equitable PCIBank v. Caguioa*, 504 Phil. 242, 248-249 (2005).

Flowing from the right of every employee to security of tenure, Article 294 of the Labor Code of the Philippines provides that an employer shall not terminate the services of an employee except for just or authorized cause, as provided for under the Code. A dismissal not based on a just or authorized cause renders the termination illegal and entitles the employee to payment of full backwages, and depending upon the circumstances — reinstatement to his former position or separation pay in lieu thereof.

Pertinent to this controversy, ICTSI cites two grounds which served as basis for Ang's dismissal — gross and habitual neglect of duty and loss of trust and confidence. These grounds fall under Article 297 (b) and (c), under the category of just causes for termination by the employer.

A dismissal based on willful breach of trust or loss of trust and confidence places upon the employer the burden to establish two conditions. The first, is that the employee terminated must occupy a position of trust and confidence, that is, either a managerial employee or a fiduciary rank-and-file employee, who in the normal exercise of his or her functions, regularly handles significant amount of money or property. The second condition demands the existence of an act justifying the loss of trust and confidence.[49]

Both of these conditions are present in this case. Accordingly, the dismissal of Ang on the basis of loss of trust and confidence is valid.

Here, Ang works as ICTSI's SAP BPC Administrator and Financial Reporting Assistant Manager; by virtue of which, the LA, the NLRC, and the CA all agree that Ang is a managerial employee that holds a position of trust and confidence.[50] The Court sees no reason to depart from such finding.

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[49] *Wesleyan University-Philippines v. Reyes*, 740 Phil. 297, 306-307 (2014); *Bravo v. Urios College, et al.*, 810 Phil. 603, 620-621 (2017).

[50] *Rollo* (G.R. No. 238347), p. 82, id. (G.R. Nos. 238568-69) at 306, 396.

With respect to the first condition, what determines an employee's classification is not the job title but the actual work performed by the employee.[51]

Ang's positions require him to possess highly technical skills. As the sole administrator of the SAP BPC System, he is tasked, among others, to roll out the new financial reporting system to other terminals all over the world. There is no doubt that Ang occupies a very sensitive position as he has access to the company's financial reporting system, and the power to authorize and limit access to the same. To be sure, in the normal exercise of his functions, Ang handles data which relates to ICTSI's finances, thus, greater fidelity is expected of him.[52]

Similarly, from Ang's duties, it can be deduced that he held a managerial position, not merely because of his designation as an Assistant Manager of Financial Reporting; but mainly as his work vests him with the power to execute management policies relative to company's migration to and implementation of the SAP BPC system.[53] This involves the performance of all acts necessary for the administration and development of the SAP BPC system and in providing support for all its end users.[54] As a managerial employee, Ang may therefore be validly dismissed on the ground of breach of trust.

Jurisprudence distinguishes between the proof required to substantiate dismissal on the ground of loss of trust and

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[51] *Bluer Than Blue Joint Ventures Company, et al. v. Esteban*, 731 Phil. 502, 504 (2014).

[52] *Rollo* (G.R. Nos. 238568-69), pp. 171, 187, 306, 395.

[53] Article 219 (m) of the Labor Code defines a managerial employee as "one who is vested with the powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the above definitions are considered rank-and-file employees for purposes of this Book."

[54] *Rollo* (G.R. No. 238347), p. 13.

confidence for managerial employees on the one hand and rank-and-file personnel on the other. In the case of a managerial employee, "mere existence of a basis for believing that he has breached the trust of his employer"[55] is enough. There need only be some basis for the loss of confidence as when the employer has a reasonable ground to believe that the employee concerned is responsible for the purported misconduct and the nature of his participation therein. Whereas, with respect to rank-and-file employees, there must be proof of involvement in the alleged events; mere uncorroborated assertion and accusation by the employer will not be sufficient.[56]

The second requirement has been clearly and convincingly established by ICTSI. Considering that Ang was a managerial employee, his termination on the ground of loss of trust and confidence does not demand proof beyond reasonable doubt; it is sufficient that there exists some basis for the employer to believe that he is responsible for the purported misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position.[57]

Tested against these parameters, the Court finds that Ang's dismissal on the basis of loss of trust and confidence is valid. The transgressions committed by Ang are work-related and are no trivial matters. Ang is not an ordinary employee. He is the Assistant Manager of Financial Reporting and the only Administrator of the SAP BPC System. Owing to the sensitivity of Ang's work in ICTSI's business operations, greater fidelity is expected of him. In this case, Ang admits to have taken an unauthorized leave of absence, justifying that he has mistakenly taken the failure of his superior to respond as an approval of his absence. Several issues were raised repeatedly by ICTSI regarding his performance, such as errors and discrepancies in his output and failure to promptly respond and offer solutions to the problems in the system.

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[55] *PJ Lhuillier, Inc. v. Camacho,* 806 Phil. 413, 428 (2017).

[56] Id.

[57] *Wesleyan University Philippines v. Reyes*, supra note 49 at 307.

The Court disagrees that Ang sufficiently countered all the accusations against him. On the contrary, the Court finds that there was an actual breach of duty committed by Ang which served as basis for ICTSI to lose their trust and confidence in him.

Considering the nature of Ang's work, and the fact that he is the *only* administrator of the SAP BPC system, it is only reasonable for ICTSI to demand that they be properly informed and for their authority to be first obtained by Ang before taking a leave of absence. Ang impliedly admitted that he violated company policy when he took a leave of absence after merely texting his superior. Ang cannot feign ignorance of this rule, as this policy of ICTSI is by no means extraordinary but rather a common practice in working environments, although its importance is all the more highlighted in this case by the nature of Ang's work. Further, it is clear from Ang's own submission that no permission was given to him but was instead told through text message that "they will discuss it the following day."[58]

Next, the errors and irregularities in the system are the responsibility of Ang as the SAP BPC Administrator. ICTSI narrated in detail its various emails containing issues which were left unanswered or unresolved by Ang. To counter such allegations, Ang claims that the emails are misleading arguing that they pertain to duties beyond his responsibility; or that his answer to one of the emails does not connote willful defiance but rather that he will do the task after validating the data first.[59] Evidently, the arguments of Ang fail to impress; his justifications notwithstanding, his response implies an admission that he failed to perform some of the tasks as ICTSI alleged. Neither did Ang present controverting evidence to show the efforts he had exerted to address ICTSI's demands or that he had fulfilled the subject tasks as he claims; he can only interpose the defense of denial. Even if there is truth in Ang's contention that he is not the person in charge of the some of the specific tasks referred

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[58] *Rollo* (G.R. No. 238347), p. 63.

[59] Id. at 194-197.

to in the email, the same would not absolve him from liability as they refer to tasks within the realm of his over-all responsibility as the SAC BPC Administrator. Ultimately, Ang is a managerial employee, as such proof beyond reasonable doubt of his involvement in the events in question is not necessary. It is sufficient that ICTSI established by substantial evidence Ang's responsibility over the purported misconduct and equally demonstrated how the same rendered him unworthy of the trust and confidence demanded of his position.[60] Employers are allowed a wide latitude of discretion in the termination of managerial employees who, by the nature of their functions, require full trust and confidence.[61]

Termination based on a just cause, in order to be valid, must also comply with the requirements of procedural due process, which means: a) the employer must furnish the employee of a written notice containing the specific grounds or causes for dismissal; b) the notice must direct the employee to submit his or her written explanation within a reasonable period from the receipt of notice; c) the employer must give the employee an ample opportunity to be heard which may be in the form of a hearing when so requested by the employee or otherwise required by the company rules; and d) the employer must serve a notice informing the employee of his or her dismissal.[62]

The Court finds that ICTSI complied with all the requirements of procedural due process in dismissing Ang from employment finding that he has been notified of the charges against him and given the opportunity to answer the same. Culled from Ang's allegations in his position paper, he was served with a notice to explain on March 4, 2014; he submitted his answer on March 11, 2014; he was invited to and attended a hearing conducted on March 20, 2014; a notice of suspension was served on him on March 20, 2014; on April 4, 2014, Ang attended

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[60] *Bravo v. Urios College, et al.*, supra note 49 at 606; *Equitable PCIBank v. Caguioa*, supra note 48 at 254-255.

[61] *Equitable PCIBank v. Caguioa*, id.

[62] *Bravo v. Urios College, et al.*, supra note 49 at 617-618.

another administrative hearing.[63] On June 26, 2014, Ang received his Notice of Dismissal from employment, which contains in detail the basis for the termination.[64]

As Ang's dismissal was based on just cause, there is no basis for the award of separation pay, backwages, and attorney's fees.[65] Similarly, Ang, as an employee dismissed from work based on willful breach of trust, is not entitled to separation pay.[66]

WHEREFORE, in consideration of the foregoing disquisitions, the Consolidated Decision of the Court of Appeals in CA-G.R. SP Nos. 146550 and 146740 dated November 9, 2017, and its Resolution dated March 22, 2018, are **REVERSED and SET ASIDE**. The Decision dated August 27, 2015 of the Labor Arbiter in NLRC NCR 00-09-11789-14 is hereby **REINSTATED**.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Zalameda, JJ.*, concur.

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[63] *Rollo* (G.R. No. 238347), pp. 63-66.

[64] Id. at 72.

[65] *Bravo v. Urios College, et al.*, supra note 49 at 626.

[66] *Security Bank Savings Corp., et al. v. Singson*, 780 Phil. 860, 869 (2016); *Immaculate Conception Academy and/or Dr. Campos v. Camilon*, 738 Phil. 220, 231 (2014).

FIRST DIVISION

[G.R. No. 238455. December 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **ROLANDO AGUILA y ROSALES,** *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. (Acting Chairperson)*:

Before the Court is an appeal[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated December 1, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC-06756, which affirmed with modification the Decision[3] dated October 4, 2013 of the Regional Trial Court, Branch 87, Rosario, Batangas (RTC) in Criminal Case No. R02-078, finding herein accused-appellant Rolando Aguila y Rosales (Rolando) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

Rolando was charged with the crime of Murder under the following Information:

"That on or about the 6th day of January, 2002, at about 11:15 o'clock in the morning, at Barangay Calubcub 2nd, Municipality of

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[1] See Notice of Appeal dated December 19, 2017; *rollo*, pp. 19-20.

[2] Id. at 2-18. Penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Fernanda Lampas-Peralta and Elihu A. Ybañez, concurring.

[3] CA *rollo*, pp. 66-71. Penned by Presiding Judge Rose Marie Manalang-Austria.

San Juan, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a small bolo (gulukan) with intent to kill, with treachery[,] and evident premeditation[,] and without any justifiable cause did then and there willfully, unlawfully[,] and feloniously attack, assault[,] and stab with the said weapon one Delfin Sayat y de Villa, 76 years old, a septuagenarian, suddenly and without warning, thereby inflicting upon the latter Hypovolemic shock secondary to stab wounds on his chest and right lower quadrant of his abdomen, which directly caused his death.

Contrary to law."[4]

Upon arraignment, Rolando pleaded not guilty to the crime charged.[5]

Version of the Prosecution

The prosecution presented the following as witnesses: (1) Cristina Sayat Tanang (Cristina), (2) Pablito Rubia (Pablito), and (3) Iluminada Sayat.

Cristina testified that Rolando is her uncle, being the brother of her mother, while the victim, Delfin Sayat y de Villa (Delfin) is her paternal grandfather who she calls *"Tatay."*[6] The killing happened on January 6, 2002, her wedding day, at around 11:00 in the morning.[7] When they arrived from the church, Rolando was already in the reception area.[8] The *"sabugan"* (traditional gift giving) was then about to take place during the reception when Delfin was stabbed by Rolando.[9] Delfin was then sitting at the table around three (3) meters away from where Cristina was.[10] She noticed that Rolando was drunk at that time and

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[4] *Rollo,* p. 3.

[5] Id.

[6] Id.

[7] Id. at 4.

[8] Id.

[9] Id.

[10] Id.

that he was holding a bolo while approaching Delfin coming from the back of the house, so she focused her sight on Rolando and when Rolando was near Delfin, she shouted *"Tatay"* to Delfin to warn him.[11] She saw Rolando stab Delfin twice using a bolo while the latter was sitting down.[12] The stab blows hit the upper right portion of the body of Delfin, below the right armpit.[13] After Rolando stabbed Delfin, Rolando ran away while Delfin was brought to a hospital in San Juan, Batangas.[14] Delfin died as a result of the incident.[15]

Version of the Defense

The defense presented the following witnesses: (1) Rolando and (2) Renato Aguila (Renato), the brother of Rolando.

Rolando testified that on January 6, 2002, he was just in his house at Brgy. Calubcub, San Juan, Batangas.[16] At that time, there was a wedding celebration at the house of his niece, Cristina, whose house is only about six (6) meters away from his house.[17] He went to the wedding reception at around 12:00 noon.[18] He saw Delfin sitting on a bench and drinking liquor with his friends and relatives.[19] He approached them and greeted them.[20] Delfin stood up and started cursing and hurling invectives at him and at the same time, Delfin drew his Super 38 caliber gun.[21] Delfin uttered the following invectives,

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[11] Id.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] Id. at 6.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

"Putang Ina mo ka papatayin kita."[22] There were many people present but it was his brother Renato who was near him and who heard those words uttered by the victim.[23] He testified that he does not know of any reason why Delfin uttered those words to him and that it was actually the second time that Delfin did those things to him.[24] The first time Delfin shouted invectives at him happened prior to January 6, 2002 and when it happened, he did not mind Delfin and just left him.[25] However, on the day of the incident, upon hearing those invectives from Delfin, and upon seeing him drawing his gun, he stood up and drew his fan knife as he was sure that Delfin was going to shoot him.[26] He was not sure what part of Delfin's body was hit because he was drunk at that time.[27] Delfin was not able to draw his gun.[28] They did not grapple for the gun.[29] After stabbing Delfin twice, he left and went home.[30] Upon reaching his house, policemen came.[31]

He further testified that he does not have any misunderstanding with Cristina, Pablito, and Rodel Tatlonghari prior to the incident.[32]

Renato is the brother of Rolando, while Delfin is the father-in-law of Renato's sister.[33] He testified that he was also at the

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[22] Id. at 7.

[23] Id.

[24] Id. at 6.

[25] Id.

[26] Id.

[27] Id.

[28] Id. at 6-7.

[29] Id. at 7.

[30] Id.

[31] Id.

[32] Id.

[33] Id. at 8.

wedding celebration of Cristina on January 6, 2002 at around 11:00 in the morning when a commotion occurred.[34] He was sitting with a group of people, which included his wife, Delfin, and some other people whose names he could not recall.[35] Delfin uttered, *"We will eat, Odik [Rolando] might come."*[36] Rolando approached them and he noticed that Delfin drew his gun and pointed it to Rolando who was about one meter away.[37] Commotion ensued.[38] He pushed Delfin to prevent him from firing his gun.[39] But considering that there was a commotion already, he did not know what happened after that.[40] He just heard from other people that his brother inflicted the wounds sustained by Delfin.[41]

Ruling of the RTC

In its Decision dated October 4, 2013, the RTC found Rolando guilty of Murder, to wit:

WHEREFORE, in view of the foregoing, judgment is her[e]by rendered finding the accused **Rolando Aguila y Rosales GUILTY beyond reasonable doubt of the crime of MURDER** defined in and penalized by Article 248 of the Revised Penal Code as amended by Republic Act 7659 hereby imposes on said accused the penalty of ***RECLUSION PERPETUA***, with all the accessory penalties of the law. Furthermore, the accused is ordered to pay the heirs of the deceased the amount of Seventy Five Thousand Pesos (Php75,000.00) as civil indemnity; Seventy Five Thousand Pesos (P75,000.00) as moral damages; Seventy Five Thousand Pesos (P75,000.00) as

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[34] Id.

[35] Id.

[36] Id.; italics supplied.

[37] Id.

[38] Id.

[39] Id.

[40] Id.

[41] Id.

exemplary damages and, Twenty Five Thousand Pesos (P25,000.00) as temperate damages.

SO ORDERED.[42] (Emphasis in the original)

The RTC rejected the claim of self-defense interposed by Rolando since he failed to substantiate it with clear and convincing proof.[43] Other than the self-serving testimony of Rolando and Renato, there was no evidence of unlawful aggression presented to prove that there was justification for Rolando to defend himself.[44] Plainly, Rolando did not establish with clear and convincing proof that Delfin assaulted him so as to constitute an imminent threat of great harm before he mounted his own attack on Delfin.[45]

Aggrieved, Rolando appealed to the CA.

Ruling of the CA

In the assailed Decision dated December 1, 2017, the CA affirmed the conviction by the RTC with modification:

WHEREFORE, premises considered, the Appeal is **DENIED**. The Decision dated October 4, 2013 of the Regional Trial Court, Branch 87, Rosario, Batangas in Criminal Case No. R02-078, finding accused-appellant Rolando Aguila y Rosales guilty beyond reasonable doubt of the crime of murder is hereby **AFFIRMED WITH MODIFICATION** as to the award of legal interest at the rate of six (6) percent per annum on all damages herein awarded to be computed from the date of finality of this Decision until fully paid.

SO ORDERED.[46] (Emphasis in the original)

The CA ruled that Rolando failed to prove with clear and convincing evidence that he acted in self-defense.[47] Rolando

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[42] CA *rollo*, p. 71.

[43] Id.

[44] Id.

[45] Id.

[46] *Rollo*, pp. 17-18.

[47] Id. at 10.

failed to prove existence of unlawful aggression on the part of the victim.[48] It further held that the RTC correctly found that the testimonies of the defense were full of inconsistencies.[49] Lastly, it ruled that the elements of Murder were established by the prosecution.[50] Treachery is evident from the fact that the victim was unprepared for the sudden and unexpected attack on his person by Rolando.[51] Prosecution witness Cristina testified that Delfin was in a sitting position when Rolando came from the right side of the victim and stabbed Delfin.[52] Clearly, Rolando's execution of the killing left Delfin with no opportunity to defend himself or retaliate.[53]

Hence, this appeal.

Issues

Whether the CA erred in affirming Rolando's conviction for Murder despite the fact that the prosecution failed to establish his guilt for Murder beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears from the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[54] 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

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[48] Id. at 15.

[49] Id.

[50] Id. at 16.

[51] Id. at 17.

[52] Id.

[53] Id.

[54] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

may even consider issues which were not raised by the parties as errors.[55] 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.[56]

After a careful review and scrutiny of the records, the Court affirms the conviction of Rolando, but only for the crime of Homicide, instead of Murder, as the qualifying circumstance of treachery was not proven in the killing of Delfin.

The accused failed to prove self-defense

In questioning his conviction, Rolando admits that he killed Delfin, arguing only that he should nonetheless not be held criminally liable for the death of Delfin because he only acted in self-defense. He insists that unlawful aggression was present when Delfin allegedly cursed at him and thereafter drew his gun.[57]

This argument deserves scant consideration.

An accused who pleads self-defense admits to the commission of the crime charged.[58] 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.[59] Of these three, unlawful aggression is indispensable. Unlawful aggression refers to "an actual physical assault, or at least a

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[55] Id.

[56] *Ramos v. People*, G.R. Nos. 218466 & 221425, January 23, 2017, 815 SCRA 226, 233.

[57] *Rollo*, p. 10.

[58] *People v. Duran, Jr.*, supra note 54, at 196.

[59] *Guevarra v. People*, G.R. No. 170462, February 5, 2014, 715 SCRA 384, 396.

threat to inflict real imminent injury, upon a person."[60] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.[61]

The Court agrees with the CA that Rolando failed to discharge his burden. All the requisites of self-defense are wanting in this case.

Anent the first requisite, there was no unlawful aggression on the part of the victim, Delfin. For unlawful aggression to be present, there must be real danger to life or personal safety.[62] Accordingly, the accused must establish the concurrence of the 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.[63] None of the elements of unlawful aggression were proven by the defense. As correctly pointed out by the CA, the testimonies of the defense witnesses were riddled with inconsistencies and contradictions, thus it is doubtful whether there was really unlawful aggression on the part of the victim:

First, during his direct examination, Rolando testified that Delfin cursed at him and then thereafter drew his gun. However, during his cross-examination, he testified that Delfin did not say anything and just suddenly drew his gun:

[Direct Examination]

"Q When you saw Delfin Sayat who were (sic) seated with others, what did you do next?
A I greeted him, sir.

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[60] *People v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 504.

[61] *Nacnac v. People*, G.R. No. 191913, March 21, 2012, 668 SCRA 846, 852.

[62] *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769, 780.

[63] *People v. Nugas*, G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

Q Will you please tell us how did you greet him?
A I told him "kelan pa po kayo diyan"
Q What was his answer?
A **He suddenly stood up and he cursed me.**
Q What did he tell you actually and you are saying that he cursed you?
A "Putang ina mo ka walanghiya kang tao."

[Cross-Examination]

"Q Did you greet Delfin Sayat him (sic) when you arrived thereat (sic)?
A Yes, ma'am. I greeted him and I asked him, *"Kaylan pa po kayo dyan?"*.
COURT:
Q Did he answer you?
A **No, Your Honor, he did not answer me but instead drew his gun.**
PROS. LUPAC:
Q Are you sure of that?
A Yes, ma'am.
Q He never uttered anything?
A Yes, ma'am.["][64] (Emphasis supplied)

Furthermore, while Rolando claimed that Delfin cursed him before drawing his gun, the testimony of defense witness Renato established that Delfin really did not shout invective words against Rolando and merely said, "we will eat, Odik [Rolando] might come."[65]

Second, as pointed out by the RTC, Rolando was also inconsistent as to the time when Delfin allegedly drew his gun:

> x x x Accused at times alternately claimed that he and victim simultaneously pulled the bolo and handgun tucked at their waists and that it was the victim that first pulled out the handgun pointed at him that prompted him to pull out the bolo tucked at his waist and stabbed the victim. In the course of his testimony, accused engagingly described that the victim was pointing the gun at him for about three

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[64] *Rollo*, pp. 10-11.

[65] Id. at 15.

minutes and within that span of time the victim never fired a shot at him. During the same span of time, accused described that he also drew his knife and that was when he stabbed the victim twice. After the accused stabbed the victim the second time, commotion ensued. x x x[66]

Third, during his direct examination, Rolando testified that Delfin had a personal grudge against him. He further stated that there was an incident prior to January 6, 2002 wherein Delfin hurled invective words against him, but he just ignored Delfin at that time.[67] However, in his cross-examination, Rolando testified that they had a good relationship prior to the date of the killing incident.[68] When he was asked by the prosecution why his answer in the cross-examination was inconsistent with his answer in his direct examination, he simply answered that he does not remember his previous answer.[69]

Fourth, Rolando testified in his direct examination that he used a "fan knife" to stab Delfin, however during his cross-examination, Rolando said that he used a "*gulukan*," not a fan knife.[70]

As seen in the inconsistent testimonies of Rolando, it is obvious that there was no unlawful aggression on the part of the victim. It has not been adequately proven that Delfin really drew a gun. In addition, even assuming that Delfin had really shouted invectives against Rolando, this is not the unlawful aggression contemplated by law. Thus, there was no physical, actual or even imminent unlawful assault done by Delfin against Rolando, which would justify Rolando's act of stabbing Delfin.

Hence, the Court finds that Rolando failed to prove that he acted in self-defense.

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

[67] *Rollo*, pp. 11-12.

[68] Id. at 12.

[69] Id. at 12-13.

[70] Id. at 14.

Treachery was not established beyond reasonable doubt.

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present, thereby making Rolando liable for Murder. The CA held:

> In the case at bench, treachery is evident from the fact that the victim was unprepared for the sudden and unexpected attack on his person by herein accused-appellant. Prosecution witness Cristina testified that the victim was [i]n a sitting position when accused-appellant came from the right side of the victim and stabbed him. Clearly, appellant's execution of the killing left the victim with no opportunity to defend himself or retaliate. Verily, accused-appellant committed the crime of murder.[71]

It is established that qualifying circumstances must be proven with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt. Thus, for Rolando to be convicted of Murder, the prosecution must not only establish that he killed Delfin; it must also be proven, beyond reasonable doubt, that the killing of Delfin was attended by treachery.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[72] To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[73] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim,

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[71] Id. at 17.

[72] *People v. Duran, Jr.*, supra note 54, at 205-206.

[73] Id. at 206, citing *People v. Dulin*, G.R. No. 171284, June 29, 2015, 760 SCRA 413, 429-430.

depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[74]

In order to appreciate treachery, both elements must be present.[75] It is not enough that the attack was sudden, unexpected, and without any warning or provocation.[76] There must also be a showing that the offender consciously and deliberately adopted the particular means, methods, and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

As testified to by the witnesses of the prosecution, the incident happened in broad daylight during the wedding reception of Cristina in a public place where there were plenty of other people present who could have offered their help. If Rolando wanted to make certain that no risk would come to him, he could have chosen another time and place to stab the victim. In a similar case, the Court held that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.[77]

Thus, the Court can reasonably conclude that Rolando acted impetuously in suddenly stabbing the victim.

Evident premeditation was likewise not established beyond reasonable doubt

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[74] Id., citing *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 632-633.

[75] Id. at 205-206, citing REVISED PENAL CODE, Art. 14, par. 16.

[76] *People v. Sabanal*, G.R. Nos. 73486-87, April 18, 1989, 172 SCRA 430, 434.

[77] *People v. Caliao*, G.R. No. 226392, July 23, 2018, 873 SCRA 262, 273.

The aggravating circumstance of evident premeditation was, although alleged in the Information, however, not adequately proven by the prosecution.

The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) overt act/acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of his acts.[78] Facts regarding "how and when the plan to kill was hatched" are indispensable. The requirement of deliberate planning should not be based merely on inferences and presumptions but on clear evidence.[79] In *People v. Abadies*,[80] the Court held:

> Evident premeditation must be based on external facts which are evident, not merely suspected, which indicate deliberate planning. There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim. Criminal intent must be evidenced by notorious outward acts evidencing a determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation" but must be "evident premeditation."[81]

In the instant case, none of the requisites of evident premeditation can be inferred from the facts as told by both the prosecution and the defense. It was not proven that Rolando made a previous decision to commit the crime. Neither was it shown that Rolando's overt acts manifestly indicate that he had clung to his determination to kill the victim. Lastly, the facts do not show the time when Rolando resolved to commit the crime. The date

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[78] *People v. Isla*, G.R. No. 199875, November 21, 2012, 686 SCRA 267, 280-281.

[79] *People v. Ordona*, G.R. No. 227863, September 20, 2017, 840 SCRA 439, 441.

[80] G.R. No. 135975, August 14, 2002, 387 SCRA 317.

[81] Id. at 324.

and, if possible, the time when the malefactor determined to commit the crime is essential, because the lapse of time for the purpose of the third requisite is computed from such date and time.[82]

Thus, evident premeditation likewise cannot be appreciated against Rolando to elevate the crime to Murder.

Proper penalty and award of damages

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide, not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. In the absence of any mitigating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant should be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree as that provided in Article 249) and whose maximum shall be within the range of *reclusion temporal* in its medium period. There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.[83]

Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* or six (6) years and one (1) day to twelve (12) years. Hence, the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, should be as it is hereby imposed.[84]

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[82] Id.

[83] *People vs. Duavis*, G.R. No. 190861, December 7, 2011, 661 SCRA 775, 786.

[84] Id.

Finally, in view of the Court's ruling in *People v. Jugueta*,[85] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant **ROLANDO AGUILA y ROSALES GUILTY** of **HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Delfin Sayat y de Villa the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carandang, Zalameda, Delos Santos,* and *Gaerlan, JJ.*, concur.

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[85] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

* Designated additional member per Raffle dated December 2, 2020 vice Chief Justice Diosdado M. Peralta.

FIRST DIVISION

[G.R. No. 240518. December 9, 2020]

BSM CREW SERVICE CENTRE PHILIPPINES, INC., *Petitioner, vs.* **ROY JASON P. JONES,** *Respondent.*

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Tolentino & Bautista Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J. (Acting Chairperson)*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 assailing the Decision[2] dated March 20, 2018 and Resolution[3] dated June 27, 2018, both of the Court of Appeals (CA) in CA-G.R. No. 150904. The CA affirmed the Decision[4] dated December 8, 2016 of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board (PVA-NCMB) which awarded total and permanent disability benefits to respondent Roy Jason P. Jones (Jones).

Facts

On November 5, 2014, petitioner BSM Crew Service Centre Philippines, Inc. (BSM) hired Jones as Messman on board the

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[1] *Rollo*, pp. 32-72, excluding Annexes.

[2] Id. at 74-89. Penned by Associate Justice Fernanda Lampas-Peralta, with Associate Justices Ma. Luisa Quijano-Padilla and Jhosep Y. Lopez, concurring.

[3] Id. at 116.

[4] CA *rollo*, pp. 45-56. Signed by Chairperson MVA Jaime B. Montealegre and Panel Members MVA Gregorio C. Biares, Jr. and MVA Jose S. Capuno, Jr.

vessel Al Gattara under a nine-month contract covered by a Collective Bargaining Agreement (CBA).[5]

In February 2015, while loading food provisions on board the vessel, Jones felt a sudden snap in his back followed by pain which radiated to his lower extremities.[6] When his pain did not subside, he was medically repatriated on March 17, 2015, and immediately referred to the company-designated physician.[7] He underwent tests and a rehabilitation program, which included injection of epidural steroid for pain management. On July 1, 2015, Jones undertook a functional capacity evaluation where the company-designated physician certified that Jones is "pain free with full range of motion."[8] Jones signed a certificate declaring that he was "cleared to return to work."[9]

According to Jones, he reported to BSM for re-employment but he was not re-engaged. In 2016, as his back pain recurred, he consulted another doctor, Dr. Francis Pimentel, who concluded, in a Medical Report[10] dated March 6, 2016, that he was "not fit for work with permanent disability" because his "facet joint hypertrophy has encroached on the exiting nerve root."[11] Jones likewise consulted another physician, Dr. Rogelio Catapang, Jr., who likewise found him to be unfit for sea duty.[12]

The parties then underwent grievance proceedings before the Associated Marine Officers and Seamen's Union of the Philippines but no settlement was reached.[13] Conciliation

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[5] *Rollo*, p. 75.

[6] Id.

[7] Id. at 76.

[8] Id.; CA rollo, p. 50.

[9] Id.

[10] CA *rollo*, pp. 192-193.

[11] *Rollo*, p. 76.

[12] Id.

[13] Id. at 76-77.

proceeding were likewise commenced before the NCMB, but this also failed.[14] After conciliation proceedings proved futile, the case was sent to voluntary arbitration before the PVA-NCMB.[15]

In a Decision dated December 8, 2016, the PVA-NCMB ordered BSM to pay Jones permanent total disability compensation amounting to US$96,909.00, sickness allowance totaling US$1,928.00, and attorney's fees.[16]

BSM filed a motion for reconsideration, which was partly granted in a Resolution[17] dated April 27, 2017. The PVA-NCMB deleted the award of sickness allowance as the same had already been paid.[18]

BSM then filed a petition for review under Rule 43 before the CA.

CA Decision

In a Decision dated March 20, 2018, the CA dismissed the petition and affirmed the PVA-NCMB's findings. The CA relied on the findings of Jones's doctors that he was totally and permanently disabled and ruled that the company-designated physicians merely downplayed his illness.[19] Likewise, the CA dismissed BSM's argument that the PVA-NCMB Decision was void as the Chairman of the panel had already died when it was promulgated.[20] The dispositive portion of the CA Decision states:

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[14] Id. at 77.

[15] Id.

[16] Id.; CA *rollo*, p. 55.

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

[18] Id.

[19] Id. at 87.

[20] Id. at 80.

WHEREFORE, the petition is dismissed and the assailed Decision dated December 8, 2016 and Resolution dated April 27, 2017 of the PVA-NCMB are affirmed.

SO ORDERED.[21]

BSM filed a motion for reconsideration but this was denied. Hence, this Petition. In due course, Jones filed his Comment[22] and, in turn, BSM filed its Reply.[23]

Issues

BSM raised the following issues:

a. whether the PVA-NCMB Decision was promulgated properly; and

b. whether the CA was correct in affirming the findings of the PVA-NCMB which awarded permanent and total disability benefits to Jones following the CBA.

The Court's Ruling

The Petition lacks merit.

The PVA-NCMB Decision was properly promulgated.

As a general rule, only questions of law may be reviewed by this Court in a petition for review on *certiorari* under Rule 45.[24] In fact, "[a] question that invites a review of the factual findings of the lower tribunals is beyond the scope of this Court's power of review and generally justifies the dismissal of the petition, except in cases where there was serious misappreciation of facts on the part of the lower courts."[25]

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[21] Id. at 89.

[22] Id. at 135-154.

[23] Id. at 170-185.

[24] *Philippine Transmarine Carriers, Inc. v. Tallafer,* G.R. No. 219923, June 5, 2017 (Unsigned Resolution).

[25] Id.

Here, BSM failed to show any reason to depart from the factual findings of the CA as regards the issue on the promulgation of the PVA-NCMB Decision.

According to BSM, the chairman of the PVA-NCMB and *ponente* of its assailed decision, Jaime B. Montealegre, had passed away on December 12, 2016 and that the Decision although dated December 8, 2016 was only promulgated on January 6, 2017. For BSM, such decision is "questionable," considering the Court's ruling in *Consolidated Bank & Trust Corporation (Solidbank) v. Intermediate Appellate Court*[26] that a *ponencia* proven to have been promulgated after the death of the *ponente*, although dated before such death, must be set aside. This is because the *ponente* in a collegiate court should remain a member thereof at the time his *ponencia* is promulgated since, at any time before that, he has the privilege of changing his opinion for the consideration of his colleagues.[27]

The CA dismissed this argument because BSM failed to submit any evidence proving the fact and date of death of the *ponente* and that it occurred before the promulgation of the PVA-NCMB Decision. The CA ruled as follows:

> Petitioners fault the PVA-NCMB in so ruling. Allegedly, "the Decision and Resolution of the Honorable Panel of Voluntary Arbitrators is defective" because "the Chairman of the Panel passed away" on or "about 12 December 2016," and was thus "already deceased" when the "decision was promulgated on 6 January 2017."
>
> Records bear that the assailed Decision dated December 8, 2016 was signed by all three (3) members of the PVA-NCMB. Apart from their bare allegation, petitioners failed to present evidence that the Chairman of the PVA-NCMB died on December 12, 2016. Moreover, petitioners failed to disprove the presumption of regularity in the performance of official functions by the PVA-NCMB. Thus, the Decision dated December 8, 2016 cannot be said to be the decision of another person.[28]

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[26] G.R. Nos. 73777-78, September 12, 1990, 189 SCRA 433.

[27] *Rollo*, pp. 49-55.

[28] Id. at 80.

The Court affirms the CA. There is no basis for BSM's claim that the PVA-NCMB Decision dated December 8, 2016 was promulgated on January 6, 2017 because that was the date the NCMB received a copy of the Decision. It failed to show any rule that the date of receipt by the NCMB of the Decision of the PVA is considered the date of the promulgation of the decision.

What is clear from the records is that the PVA-NCMB Decision was dated and signed on December 8, 2016 by the three members of the PVA-NCMB. Thus, even if the *ponente* died on December 12, 2016, the fact remains that the members of the panel signed the Decision on December 8, 2016. BSM failed to present any evidence to controvert this. The CA was therefore correct in ruling that the PVA-NCMB Decision was properly promulgated.

Jones is entitled to total and permanent disability benefits.

As to the CA and the PVA-NCMB's finding that Jones is entitled to total and permanent disability benefits, the Court affirms the same but on a different basis.

As the CA found, Jones was cleared to return to work by the company-designated physicians on July 1, 2015, and he even signed a certificate to this effect.[29]

It appears, however, that just about eight months after having been cleared to return to work, Jones experienced low back pain such that on March 6, 2016, his own doctor found that:

"x x x x x x x x x

The patient presented here has been suffering from continuous low back pain that was not responsive to physical therapy and epidural steroid injection. The explanation is because the facet joint hypertrophy has encroached on the exiting nerve root. The encroachment will not be resolved by steroid injection nor physical therapy. For the encroachment to be resolved it has to be removed surgically. With

[29] Id. at 84.

his present medical condition, he will not be able to perform activities requiring bending, lifting and prolonged standing. All these activities are required at his work as a seafarer. He is not fit for work with permanent disability."[30]

The other Medical Report[31] dated March 14, 2016 of Jones's other doctor stated the following:

Mr. Jones is still experiencing on and off pain secondary to a facet [problem] as diagnosed by MRI studies of the lumbar spine. The lumbar spine has either five bones, or vertebrae, which are described as L1 to L5. These vertebrae span from the waist to the [top] of the hips. The stiffness with associated pain may be due either to intra-articular adhesions following a fracture involving the facet joints, or to extra-articular adhesions following traumatic edema with organization of the serofibrinous exudates into adhesions. The persistence of stiffness is sometimes an early symptom of traumatic arthritis. Interruption of the continuity of the articular cartilage by the fracture line alone is sufficient to initiate arthritic changes, seen chiefly in those patients who make constant demands at work (e.g., manual labor). The condition is then a sequel to raised pressure on the articular surfaces and continued stresses on the ligaments.

The lumbar region of the spine is prone to damage and injury for several reasons. The lumbar region supports the majority of the body's weight. The lower spine can be easily strained and injured during heavy lifting, particularly when inappropriate techniques are utilized. It is common for this area of the body to receive direct trauma resulting from falls, car accidents and participation in sporting activities. The articular surfaces endure significant wear and tear over time, making them susceptible to weakening and breakdown.

In addition to age-related degeneration, there is also degenerative changes noted in the lumbar spine; seen in the x-ray findings of the lumbar spine; other risk factors for developing low back pain include an occupation that requires heavy lifting, a history of back injuries, lack of exercise and carrying excess body weight. Most patients who are diagnosed with low back pain find that the condition resolves on its own or with conservative treatment administered over the course of a few weeks or months. A period of rest, pain relievers, anti-

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[30] Id. at 84-85.

[31] CA *rollo*, pp. 194-196.

inflammatory medications (epidural injection) and physical therapy to help ease any discomfort; in some cases, the symptoms might persist or worsen, an indication for open back surgery, such as a spinal fusion.

Mr. Jones's work demands are heavy; as a seafarer, he may be called on to use emergency, lifesaving, damage control, and safety equipment. He must perform all operations connected with the launching of lifesaving equipment. He is also expected to be able to operate deck machinery, such as the windlass or winches while mooring or unmooring, and to operate cargo gear or other tasks directed by his superiors. These are activities which may require lifting heavy equipments *(sic)* or objects. ***Mr. Jones*** states that he cannot perform these activities. These are restrictions placed on the patient's activities to prevent further injuries from occurring; he is UNFIT for further sea duties.[32]

The PVA-NCMB and the CA ruled that Jones's referral to his doctor of choice eight months after being declared fit to work is still part of the dispute resolution mechanism under Section 20(A) of the 2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC). Unfortunately, this is erroneous.

Section 20(A) of the POEA-SEC finds no application to Jones's claim for disability benefits because his illness manifested after the term of his employment contract. As the Court held in *Ventis Maritime Corporation v. Salenga*[33] *(Ventis)*: "Section 20(A) applies only if the seafarer suffers from an illness or injury **during the term of his contract**, *i.e.*, while he is employed."[34]

Here, it is undisputed that on July 1, 2015, Jones was already cleared to return to work and he even signed a certificate acknowledging this. Jones himself admitted to reporting to BSM for re-employment but he was not re-employed.[35] Therefore, his claim for disability benefits because of his illness is no longer

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[32] Id. at 195-196.

[33] G.R. No. 238578, June 8, 2020.

[34] Id. at 7. Emphasis and underscoring in the original.

[35] CA *rollo*, p. 183.

covered by Section 20(A) of the POEA-SEC. That said, Jones may still claim for disability benefits but following a different set of rules and procedures not covered by Section 20(A).

In claims for disability benefits for illnesses that manifest after a seafarer's employment, the procedure to be followed was outlined in *Ventis*, as follows:

> In instances where the illness manifests itself or is discovered after the term of the seafarer's contract, the illness may either be (1) an occupational illness listed under Section 32-A of the POEA-SEC, in which case, it is categorized as a work-related illness if it complies with the conditions stated in Section 32-A, or (2) an illness not listed as an occupational illness under Section 32-A but is reasonably linked to the work of the seafarer.
>
> For the first type, the POEA-SEC has clearly defined a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." What this means is that to be entitled to disability benefits, a seafarer must show compliance with the conditions under Section 32-A, as follows:
>
> 1. The seafarer's work must involve the risks described therein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
> 4. There was no notorious negligence on the part of the seafarer.
>
> As to the second type of illness — one that is **not listed as an occupational disease in Section 32-A** — *Magsaysay Maritime Services v. Laurel* instructs that the seafarer may still claim provided that he suffered a disability occasioned by a disease contracted on account of or aggravated by working conditions. For this illness, "[i]t is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, *at the very least, aggravation of any pre-existing condition he might have had*." Operationalizing this, to prove this reasonable linkage, it is imperative that the seafarer must prove the requirements under Section 32-A: the risks involved in his work; his illness was

contracted as a result of his exposure to the risks; the disease was contracted within a period of exposure and under such other factors necessary to contract it; and he was not notoriously negligent.[36] (Emphasis and underscoring in the original; citations omitted)

Applying *Ventis*, because Jones's low back pain is not listed in Section 32-A of the POEA-SEC, he should prove that there is reasonable linkage between his low back pain and his work. He should prove the risk involved in his work, his illness was a result of his exposure to the risks, the disease was contracted within a period of exposure and under such other factors necessary to contract it, and he was not notoriously negligent.

Here, Jones, in his Affidavit[37] dated June 30, 2016, stated that his work as a Messman included considerable use of his back:

- As messman, I am the "all-around man" of the vessel. I worked as the coffee man, assistant cook, pantry man, waiter, dishwasher, bedroom steward, and porter. I also perform any of the following duties: setting tables, serving food, or waiting on tables. Part of my job is also to clean the dishes and equipment, prepare coffee and beverages, make beds and clean quarters of officers;
- I performed physical activities that require considerable use of my back. I performed strenuous tasks such as standing for long periods of time, climbing, lifting, pulling, pushing, balancing, walking, stooping, squatting, and/or moving equipment, materials, and provisions on board the ship[.][38]

The March 6, 2016 Report of his doctor stated that his low back pain was not responsive to physical therapy and epidural steroid injection. As quoted above, the doctor found that the facet joint hypertrophy has encroached on the exiting nerve root and that the encroachment will not be resolved by steroid injection nor physical therapy and surgery was required to resolve it.

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[36] *Ventis Maritime Corporation v. Salenga*, *supra* note 31, at 11-12.

[37] CA *rollo*, pp. 182-184.

[38] Id. at 182.

Further, the March 14, 2016 Medical Report states risk factors for developing low back pain including an occupation that requires heavy lifting, a history of back injuries, lack of exercise and carrying excess body weight.

The Court finds that Jones was able to prove through substantial evidence that he was suffering from low back pain and that this was reasonably linked to his work.

Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion even if other equally reasonable minds might conceivably opine otherwise.[39]

The foregoing convinces the Court that the nature of Jones's work as a Messman or an "all-around man" exposed him to the risk of developing low back pain as he was required to perform physical activities that required considerable use of his back. His doctors also confirm that such activities exposed him to the risk of developing low back pain and given his undisputed low back pain, he would no longer be able to perform activities that require the lifting of heavy equipment. Finally, there is nothing on record to show that Jones was notoriously negligent. Given this, Jones is entitled to total and permanent disability benefits.

The Court also affirms the CA's findings that the CBA is applicable as it is supported by substantial evidence. The CA ruled as follows:

> There is likewise no merit in [BSM's] claim that the CBA is not applicable because [Jones] did not suffer a work-related illness and his injury was not brought about by an accident. Notably, the parties' CBA contains a "Permanent Medical Unfitness" clause which does not classify whether the permanent disability was due to a work-related illness or accident. Thus:

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[39] *Beltran v. AMA Computer College-Biñan*, G.R. No. 223795, April 3, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65309>.

> "A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, as follows: US$161,514.00 for senior officers, US$129,212.00 for junior officers and US$96,909 for ratings (effective 2015); x x x"[40]

The Court likewise affirms the award of attorney's fees as Jones was indeed compelled to litigate due to BSM's failure to satisfy his valid claim.

Consistent with the Court's pronouncement in *Nacar v. Gallery Frames*,[41] interest at the rate of six percent (6%) *per annum* is hereby imposed on the total monetary award. Further, following *Guagua National Colleges v. Court of Appeals*,[42] decisions of the PVA-NCMB are immediately final and executory albeit subject to judicial review. Accordingly, interest shall be reckoned from the finality of the Decision and Resolution of the PVA-NCMB until the full satisfaction of all monetary awards.

WHEREFORE, premises considered, the Petition is **DENIED**. The monetary awards in the PVA-NCMB Decision dated December 8, 2016 and Resolution dated April 27, 2017 are **AFFIRMED** with **MODIFICATION** that, if still unpaid, interest shall accrue at the rate of six percent (6%) *per annum* from the finality of the PVA-NCMB Decision and Resolution until full payment.

SO ORDERED.

Hernando,[*] *Carandang, Zalameda,* and *Gaerlan, JJ.*, concur.

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[40] *Rollo*, p. 88.

[41] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[42] G.R. No. 188492, August 28, 2018, 878 SCRA 362.

[*] Designated as additional member per Raffle dated November 23, 2020 vice Chief Justice Diosdado M. Peralta.

EN BANC

[G.R. No. 241394. December 9, 2020]
(Formerly UDK No. 16255)

FLORDELIS B. MENZON, JOSE E. CLARIN, RENGIE O. VILLABLANCA, RONSARD P. GRANALI, RAQUEL R. POMIDA, RIZALITO T. LORECHE, MARK ANTHONY G. FARAON and EMILY B. PRETENCIO, *Petitioners, v.* **COMMISSION ON AUDIT, Commission Proper, VIRGINIA C. TABAO, Audit Team Leader, and ALICIA M. MALQUISTO, Supervising Auditor,** *Respondents.*

APPEARANCES OF COUNSEL

Santo Law Office for petitioners.
The Solicitor General for respondents.

D E C I S I O N

GAERLAN, *J.*:

Before the Court is a petition for *certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court, which seeks to set aside Decision No. 2018-126[2] dated January 26, 2018 of the Commission on Audit (COA). The assailed Decision affirmed Regional Office No. VIII Decision No. 2016-036[3] dated June 6, 2016 rendered by the COA Regional Office No. VIII (Region VIII) upholding the Notices of Disallowance (NDs) on the release of loan take-outs in the total amount of ₱13,791,000.00.

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[1] *Rollo*, pp. 15-56; signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito with Director IV Nilda B. Plaras, attesting.

[2] *Id.* at 64-77.

[3] *Id.* at 139-154.

The Antecedents

The Home Development Mutual Fund (HDMF), more popularly known as the Pag-IBIG Fund, was established as "an answer to the need for a national savings program and an affordable shelter financing for the Filipino worker."[4] Its rule-making power is vested in its own Board of Trustees.[5]

To fast track the government's housing program, the Board of Trustees devised a mechanism wherein accredited developers are provided an express take-out window, denominated as Window 1 — Contract to Sell (CTS)/Real Estate Mortage (REM) with Buyback Guaranty. Under the said mechanism, the developer shall be authorized to "receive, evaluate, pre-process and approve the housing loan applications of the Fund's member-borrowers" secured by CTS/REM on the property. Thereafter, the Fund shall process and release the loan proceeds due to the developer within seven working days from submission of the required documents. The guidelines for its implementation are embodied in Pag-IBIG Fund Circular No. 212[6] and Pag-IBIG Fund Circular No. 237.[7]

Pursuant thereto, Ray F. Zialcita (Zialcita), as an accredited developer of Villa Perla Subdivision located at Maasin City, Southern Leyte, filed with the HDMF Region VIII the housing loan applications of 21 member-borrowers between 2007 to 2009.[8]

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[4] <https://www.pag-ibigfund.gov.ph/history.html> (last visited December 2, 2020).

[5] *Rollo*, pp. 87-112; Presidential Decree No. 1752, entitled "Home Development Mutual Fund Law of 1980," signed on January 1981, repealed by Republic Act No. 9679 entitled "An Act Further Strengthening the Home Development Mutual Fund, and for other Purposes," approved on July 21, 2009.

[6] "Omnibus Guidelines Implementing the Pag-IBIG Takeout Mechanism under the Developers' Cts/Rem Scheme," approved on April 3, 2006.

[7] *Rollo*, pp. 113-138; "Revised Omnibus Guidelines Implementing the Pag-IBIG Takeout Mechanism under the Developers' Cts/Rem Scheme," approved on December 21, 2007.

[8] *Id.* at 65.

Upon receipt of the loan applications and their attached documents, herein petitioners as officials and employees of the HDMF Region VIII approved and released the total amount of ₱13,791,000.00 to Zialcita as payment for the lots allegedly purchased by the member-borrowers.

On post-audit, however, various irregularities and deficiencies in the submitted documents were discovered by Audit Team Leader (ATL) Virginia C. Tabao and Supervising Auditor (SA) Alicia M. Malquisto, including but not limited to the following: (1) the pay slip was not duly certified by the employer; (2) the Contract of Employment was exactly the same as another borrower and not duly certified to by the employer; (3) there was no signature of petitioner Flordelis B. Menzon (Menzon) on the Disclosure Statement on Loan Transaction and in the Loan Mortgage Agreement; (4) there was no signature of Menzon as approving officer on the Loan Evaluation Sheet; (5) the Notice of Installment/ Amortization was not signed by the borrower; (6) the residence certificate of one borrower was the same with that of another borrower; (7) the proof of billing was in the name of another person; (8) on the day of the take-out, there was still ongoing site development as stated in the Confirmation of Appraisal dated after the take-out date; (9) the Loan and Mortgage Agreement and Deed of Absolute Sale were not notarized; (10) the Application Form was not completely filled up; (11) the copies of the application form were in different handwriting; (12) no proof of billing address; (13) no proof of income; (14) the borrower is an OFW per application but no proof of income was attached; (15) the amount of loan as appearing in the Notice of Loan Amortization was greater than the amount indicated in the disbursement voucher; (16) the date in the application form was two days earlier than the date of the Certificate of Acceptance; and (17) some documents were not signed by the responsible officer/s of the HDMF Region VIII.[9]

Thus, payment of the loan proceeds to Zialcita was suspended through the issuance of Notices of Suspension (NSs),[10] *viz.*:

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[9] Id. at 139-143.

[10] Id. at 65-69; 139-143.

NS No.	Date	Amount	Borrower/Buyer
11-001(08)	May 4, 2011	₱ 997,000.00	Odillo Caubat Angub
11-002(08)	May 4, 2011	997,000.00	Oswaldo Caubat Angub
11-003(08)	May 4, 2011	600,000.00	Leica Villano Cerro
11-004(07)	May 4, 2011	300,000.00	Bienvenida Gloria Deligero
11-005(08)	May 4, 2011	513,000.00	Conrado Markines Galeon, Jr.
11-006(08)	May 4, 2011	510,000.00	Emelia Magnaye Galeon
11-007(08)	May 4, 2011	600,000.00	Renato Arcenas Gelig
11-008(08)	May 4, 2011	900,000.00	Felipe Maureal Gloria
11-009(07)	May 5, 2011	600,000.00	Jesus Maureal Gloria
11-010(08)	May 5, 2011	750,000.00	Faye Sortonis Lopez
11-011(08)	May 5, 2011	493,000.00	Florian L. Loquinte
11-012(08)	May 5, 2011	615,000.00	Joseph Yan Macuto
11-013(08)	May 5, 2011	600,000.00	Jeneth Pituc Maitem
11-014(09)	May 5, 2011	630,000.00	Agripino Aguelo Maldo, Jr.
11-016(08)	May 5, 2011	600,000.00	Bernadette Bato Maureal
11-017(08)	May 5, 2011	750,000.00	Eleazer Bato Maureal
11-018(08)	May 5, 2011	600,000.00	Lorna Macuto Moreno
11-019(08)	May 5, 2011	615,000.00	Teresa Crisolita Quirong
11-020(08)	May 5, 2011	666,000.00	Aurelio Magnaye Romero
11-021(08)	May 5, 2011	600,000.00	Jerolyn Servillejo Vergara
11-022(08)	May 5, 2011	855,000.00	Eleine Apad Quirong
TOTAL		**₱13,791,000.00**	

In the same NSs, petitioners were directed to explain, justify, and settle the irregularities and deficiencies found by the ATL and the SA within 90 days from receipt thereof. For petitioners' failure to comply, NDs were subsequently issued, all dated February 29, 2012. The persons liable stated in the NDs and their participation in the disallowed transactions are summarized below:[11]

[11] Id. at 69-71.

Person Responsible	Position	ND No.	Nature of Participation
Mr. Ray F. Zialcita	Developer	2012-01(08) to 2012-03(08); 2012-04(07); 2012-05(08) to 2012-08(08); 2012-09(07); 2012-10(08) to 2012-13(08); 2012-14(09); 2012-15(08) to 2012-21(08)	1. Filed the loan application with HDMF; 2. Presented as claimant and received the net proceeds of the loans.
Ms. Flordelis B. Menzon	Department Manager III	2012-01(08) to 2012-03(08); 2012-04(07); 2012-05(08) to 2012-08(08); 2012-09(07); 2012-10(08) to 2012-13(08); 2012-15(08) to 2012-21(08)	1. Approved the payments; 2. Countersigned the checks; 3. Approved the requests for payment; 4. Signed the Notices of Installment/Amortization; 5. Approved the Mortgage Review Sheet.
Mr. Jose E. Clarin	Assistant Department Manager-Operations	2012-01(08) to 2012-03(08); 2012-04(07); 2012-05(08) to 2012-08(08); 2012-09(07); 2012-10(08) to 2012-13(08) 2012-14(09) 2012-15(08) to 2012-21(08)	1. Certified that the expenses are necessary, lawful, and done under his direct supervision; 2. Signed the "requested by" portion of the Request for Payment; 3. Approved the Pag-IBIG Housing Loan Program (PHLP) Evaluation Sheet in some transactions; 4. Signed and recommended approval of the Mortgage Review Sheet in some transactions; 5. Performed the actions of the Dept. Manager III in her absence.
Ms. Leonora P. Gatchalian	Chief, General Accounting and Budgeting Division	2012-01(08) to 2012-03(08); 2012-04(07); 2012-05(08) to 2012-08(08); 2012-09(07); 2012-10(08) to 2012-13(08); 2012-14(09); 2012-15(08) to 2012-16(08); 2012-18(08) to 2012-21(08)	Certified availability of funds/completeness of the supporting documents[.]
Mr. Rengie O. Villablanca	Chief, Housing	2012-01(08) to 2012-03(08); 2012-05(08) to 2012-08(08);	1. Certified as correct the schedule of payment;

	Loans Division	2012-10(08) to 2012-13(08) 2012-14(09); 2012-15(08) to 2012-21(08)	2. Signed the "Reviewed by" portion of the PHLP Loan Evaluation Sheet[;] 3. Signed the "Reviewed by" portion of the Mortgage Review Sheet; 4. Signed the "Noted" portion of the Confirmation of Appraisal, in most transactions.
Ms. Raquel R. Pomida	Member, Service Officer I	2012-01(08) to 2012-03(08); 2012-05(08) to 2012-08(08); 2012-09(07); 2012-10(08) to 2012-13(08); 2012-14(09); 2012-15(08) to 2012-21(08)	1. Signed the "Reviewed by" portion of the Schedule of Payments, in some transactions; 2. Signed the "Reviewed by" portion of the PHLP Loan Evaluation Sheet, in some transactions when the Chief, Housing Loans Division, was not present; 3. Signed the "Reviewed by" portion of the Mortgage Review Sheet, in some transactions when the Chief, Housing Loans Division, was not present.
Ms. Emily B. Pretencio	Records Officer II	2012-01(08) to 2012-03(08); 2012-04(07); 2012-05(08) to 2012-08(08) 2012-09(07); 2012-10(08) to 2012-13(08); 2012-14(08); 2012-15(08) to 2012-21(08)	Prepared the Schedule of Payment, PHLP Loan Evaluation Sheet, Mortgage Review Sheet and disbursement voucher.
Mr. Rizalito T. Loreche	Loans and Credit Evaluator III	2012-02(08); 2012-04(07); 2012-08(08); 2012-09(07); 2012-11(08); 2012-14(09); 2012-15(08); 2012-16(08); 2012-20(08); 2012-21(08)	Signed the Confirmation of Appraisal as appraiser[.]
Mr. Mark Anthony Faraon	Property Appraiser	2012-03(08); 2012-05(08) to 2012-07(08); 2012-19(08)	Signed the Confirmation of Appraisal as appraiser[.]

Mr. Emelito Naynos	Member Service Officer I	2012-03-(08); 2012-05(08); 2012-06(08); 2012-09(07); 2012-12(08); 2012-13(08); 2012-15(08); 2012-17(08); 2012-18(08); 2012-20(08)	Prepared the Schedule of Payment[.]
Mr. Ronsard P. Granali	Credit Investigator III	2012-04(07); 2012-07(08); 2012-08(08); 2012-09(07); 2012-18(08); 2012-19(08); 2012-21(08)	1. Signed the "Reviewed by" portion of the Schedule of Payment; 2. Signed the "Reviewed by" portion of the PHLP Loan; 3. Signed the "Reviewed by" portion of the Mortgage Review Sheet; 4. Signed the "Noted by" portion of the Confirmation of Appraisal done by the appraiser.
Mr. Nelson T. Custodio	Records Officer	2012-01(08); 2012-10(08); 2012-12(08); 2012-13(08); 2012-15(08); 2012-17(08); 2012-18(08);	Signed the Confirmation of the Appraisal as appraiser[.]
Ms. Ma. Carmel Cayobit	Budget Officer	2012-17(08)	Certified availability of funds/completeness of the supporting documents[.]

Petitioners, along with Leonora P. Gatchalian (Gatchalian), Emelito Naynos (Naynos), Nelson T. Custodio (Custodio), and Ma. Carmel Cayobit (Cayobit), appealed the NDs before the COA Region VIII by filing a Joint Memorandum of Appeal dated October 1, 2012.

The COA Region VIII Ruling

The COA Region VIII, in its Decision No. 2016-036[12] dated June 6, 2016, upheld the issuance of the NDs. It found the deficiencies or irregularities clear and glaring on the face of

[12] Id. at 139-154.

the housing loan applications, so much so that had petitioners scrutinized the same, loan releases could have been prevented pending compliance with the documentary requirements.[13]

The COA Region VIII held that petitioners cannot avoid responsibility by passing the blame solely to Zialcita as the payee-developer. It expressed the view that granting it was the latter who received, evaluated, pre-processed and approved the housing loan applications of the Fund's member-borrowers, in accordance with Pag-IBIG Fund Circular Nos. 212 and 237, petitioners were not precluded from looking into all the documents submitted to their office as the responsibilities of further processing and final approval are lodged upon them.[14]

Therefore, the COA Region VIII ruled that petitioners should be liable for the disallowed transactions in view of their neglect in the performance of their duties. Petitioners Raquel R. Pomida (Pomida), Emily B. Pretencio (Pretencio), Mark Anthony G. Faraon (Faraon) and Rizalito T. Loreche (Loreche) were not absolved from liability although they were not included in the NSs and were merely named in the NDs. According to the COA Region VIII, their right to due process was not violated despite this circumstance because the ATL and the SA faithfully followed the requirements in the issuance of the NDs after finding them to have directly participated in the release of the loan take-outs.

The *fallo* of ROVIII Decision No. 2016-036 reads:

> WHEREFORE, premises considered, the appeal has to be as it is hereby **DENIED**. The requests for exclusion from liability of appellants Pomida, Pretencio, Faraon and Loreche are likewise **denied**. Accordingly, Notice of Disallowance ND Nos. 2012-01 to 03(08); 2012-05 to 08(08); 2012-10 to 13(08); 2012-15 to 21(08); 2012-04(07); 2012-09(07) and 2012-14(09) all dated February 29, 2012 in the total amount of ₱13,791,000.00 are hereby **AFFIRMED**.[15] (Emphasis in the original)

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[13] Id. at 150.

[14] Id.

[15] Id. at 154.

Undeterred, petitioners filed their consolidated petitions for review[16] with the COA Proper. The other officers and employees named liable in the NDs no longer joined them. Albeit the belated filing, the COA Proper took cognizance of the case in the interest of substantial justice.

The COA Ruling

On January 26, 2018, the COA Proper rendered the assailed Decision No. 2018-126,[17] the decretal portion of which states:

> **WHEREFORE**, premises considered, the consolidated Petitions for Review of Ms. Raquel R. Pomida, et al., (CPCN 2016-0596), and Ms. Flordelis B. Menzon, et al., (CPCN 2016-0647), all of Home Mutual Development Fund Regional Office No. VIII, Tacloban City, of Commission on Audit Regional Office No. VIII Decision No. 2016-036 dated June 6, 2016 is **DENIED** for lack of merit. Accordingly[,] Notice of Disallowance Nos. 2012-01 to 03(08); 2012-05 to 08(08); 2012-10 to 13(08); 2012-15 to 21(08); 2012-04(07); 2012-09(07) and 2012-14(09) all dated February 29, 2012, on the release of loan take-outs to Mr. Ray F. Zialcita, developer of Villa Perla Subdivision, Maasin City, Southern Leyte, in the total amount of ₱13,791,000.00, are hereby **AFFIRMED**.[18] (Emphasis in the original)

The COA Proper affirmed the findings of the COA Region VIII. It reiterated that the failure of petitioners to detect the obvious irregularities before the release of the loan take-outs and their failure to conduct post take-out inspection of accounts and post-validation of borrowers were primarily the reasons why they were held liable for the disallowances. It emphasized that petitioners, as public officers who participated in the release of the loans, should have exercised the required diligence in the course of its processing, review, and approval to ensure that all documents submitted were valid to protect the interest of the government.[19]

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[16] Id. at 30.

[17] Id. at 64-77.

[18] Id. at 76.

[19] Id. at 75.

Finally, the COA Proper expounded on the ruling of the COA Region VIII not to exclude petitioners Pomida, Pretencio, Faraon and Loreche from liability. It stated that "[t]he essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of" and that the same had been afforded to them when they were allowed to file their Joint Memorandum of Appeal after receipt of the NDs.[20]

Hence, this petition raising the following issues for our consideration:

A.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING THE DISALLOWANCE OF VARIOUS LOAN AMOUNTS FOR LOT PURCHASES, NOTWITHSTANDING THAT SAID LOAN AMOUNTS ARE NOT EXPENSES OR EXPENDITURES.

B.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING THE PREMATURE DISALLOWANCE OF THE VARIOUS LOAN AMOUNTS FOR LOT PURCHASES, NOTWITHSTANDING THAT THE PAG-IBIG FUND HAS AVAILED ITSELF OF REMEDIES AGAINST THE DEVELOPER AND HAD TAKEN STEPS TO CONVERT THE SUBJECT LOTS INTO ACQUIRED ASSETS AND THEREAFTER SELL THE SAME.

C.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING PETITIONERS' LIABILITY FOR THE RISKS ATTENDANT TO THE POLICY DECISION OF THE BOARD OF TRUSTEES OF THE PAG-IBIG FUND TO TRANSFER TO THE

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[20] Id.

DEVELOPER THE SOLE RESPONSIBILITY OF SUBMITTING CORRECT AND AUTHENTIC DOCUMENTS AND OF APPROVING THE LOAN AND LOT PURCHASE APPLICATIONS.

D.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING THE DISALLOWANCE OF THE VARIOUS LOANS FOR LOT PURCHASES, NOTWITHSTANDING THAT THE ALLEGED INCOMPLETE OR QUESTIONABLE DOCUMENTATION PERTAINING TO THE BORROWERS WERE THE SOLE RESPONSIBILY [sic] OF THE DEVELOPER.

E.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING THE DISALLOWANCE OF THE VARIOUS LOANS FOR LOT PURCHASES ON THE BASIS OF TRIVIAL OR INCONSEQUENTIAL DEFICIENCIES ON THE PART OF OFFICIALS OF THE PAG-IBIG FUND.

F.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING THE DISALLOWANCE OF THE VARIOUS LOANS FOR LOT PURCHASES FOR LACK OF NOTARIZATION OF SOME DOCUMENTS, NOTWITHSTANDING THAT THE NOTARIZATION OF SAID DOCUMENTS WAS NOT YET REQUIRED.

G.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING THE DISALLOWANCE OF THE VARIOUS LOANS FOR LOT PURCHASES, NOTWITHSTANDING THAT PETITIONERS MERELY RELIED IN GOOD FAITH ON THE PERFORMANCE OF DUTY OF THE DEVELOPER, WHO HAD THE SOLE RESPONSIBILITY OF SUBMITTING CORRECT AND

AUTHENTIC DOCUMENTS AND OF APPROVING THE LOAN AND LOT PURCHASE APPLICATIONS.

H.

WHETHER OR NOT THE HONORABLE COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONFIRMING THE DISALLOWANCE INSTEAD OF EXCUSING PETITIONERS FROM PAYING THE DISALLOWED AMOUNTS FOR REASON OF GOOD FAITH.[21]

The Court's Ruling

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created like herein respondent 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. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.[22]

In the present case, petitioners question the jurisdiction of the COA by asserting that loans are investments, and not expenditures; thus, beyond the scope of its audit review.

In common parlance, investments are allocations of money with the potential to produce income or profit while expenditures are amounts of money spent as payment for goods or services. Here, when the applications for loan were approved by the HDMF Region VIII and the proceeds thereof were released to Zialcita, the said proceeds represent the payments advanced by the HDMF Region VIII, on behalf of its member-borrowers, for the properties

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[21] Id. at 16-18.

[22] *City of General Santos v. Commission on Audit*, 733 Phil. 687, 697 (2014).

allegedly purchased from Zialcita. As such, they are expenditures subject to audit review by the COA. But petitioners are not entirely wrong in arguing that the loans granted by the HDMF Region VIII are also investments because they generate income through interest on the principal amounts borrowed. Regardless whether they are expenditures or investments, they primarily involve the use of government funds.

The COA is vested by the Constitution with the power, authority, and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and **expenditures or uses of funds** and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis.[23]

Pursuant to the exercise of its powers and functions, the COA has the exclusive authority, subject to limitations, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.[24]

In keeping with its Constitutional mandate, the COA may require, for purposes of inspection, the submission of papers filed with, and which are in the custody of, government offices[25]

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[23] Section 2(1), Article IX-D, 1987 PHILIPPINE CONSTITUTION. Emphasis supplied.

[24] Id. at Section 2(2).

[25] Section 39(1), Chapter 2, Title I of Presidential Decree No. 1445 *(Government Auditing Code of the Philippines)* reads:

(1) The Commission shall have the power, for purposes of inspection, to require the submission of the original of any order, deed, contract, or other document under which any collection of, or payment from, government funds may be made, together with any certificate, receipt, or other evidence in connection therewith. If an authenticated copy is needed for record purposes, the copy shall upon demand be furnished.

to ascertain that claims against government funds are supported with complete documentation.[26] It shall then be the duty of the officials or employees concerned to comply promptly with this requirement. Failure or refusal to do so without justifiable cause shall constitute a ground for administrative disciplinary action as well as for disallowing permanently a claim under examination.[27]

In the instant case, the ATL and the SA, during post-audit, found irregularities or deficiencies on the documents relating to the housing loan applications submitted to the HDMF Region VIII by Zialcita under the Window 1 — CTS/REM with Buyback Guaranty scheme. As a result, Notices of Suspension (NSs) were issued by the ATL and the SA, in accordance with Section 9, Chapter III of the 2009 Rules and Regulations on the Settlement of Accounts (RRSA),[28] to wit:

SECTION 9. NOTICE OF SUSPENSION (NS)

9.1. The Auditor shall issue an NS x x x for transactions of doubtful legality/propriety/regularity which may result in pecuniary loss of the government, and which will be disallowed in audit if not satisfactorily explained or validly justified by the parties concerned.

9.2. The NS shall be addressed to the head of agency and the accountant and served on the persons responsible, stating the amount suspended, the reason/s for the suspension, the justification/ explanation/legal basis or documentation required in order to lift the suspension, and the persons responsible for compliance with the requirements. It shall be signed by both the Audit Team Leader and Supervising Auditor. x x x

x x x x x x x x x

9.4. A suspension should be settled within ninety (90) calendar days from receipt of the NS; otherwise the transaction covered by it shall be disallowed/charged after the Auditor shall have satisfied himself

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[26] Section 4 (6) of Presidential Decree No. 1445; Section 5(f), Chapter 2 of the Government Accounting Manual (GAM) for National Government Agencies, Vol. I, COA Circular No. 2015-007 dated October 22, 2015.

[27] Section 39(2), Chapter 2, Title I of Presidential Decree No. 1445.

[28] COA Circular No. 2009-06 dated September 15, 2009.

that such action is appropriate. Consequently, the Auditor shall issue the corresponding ND/NC.

With the lapse of the 90-day period and petitioners' failure to comply with the NSs, the deficiencies relative to the transactions covered thereby remained unexplained. Consequently, the disbursements of loan take-outs in favor of Zialcita amounting to ₱13,791,000.00 can be deemed as irregular expenditures.

The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of disciplines. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.[29]

In view of the foregoing, the ATL and the SA were justified in issuing the NDs, in conformity with Section 10, Chapter III of the 2009 RRSA, which provides:

SECTION 10. NOTICE OF DISALLOWANCE (ND)

10.1 The Auditor shall issue an ND x x x 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.

x x x x x x x x x

10.2 The ND shall be addressed to the agency head and the accountant; and served on the persons liable; and shall indicate the transaction and amount disallowed, reasons for the disallowance, the laws/rules/regulations violated, and persons liable. It shall be signed by both

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[29] *Miralles v. Commission on Audit*, 818 Phil. 380, 393 (2017).

the Audit Team Leader and the Supervising Auditor. x x x (Emphasis supplied)

Ergo, the COA did not commit grave abuse of discretion in issuing the assailed Decision affirming the NDs. The propriety of the issuance of the NDs is buttressed by petitioners' very own statement that the supposed member-borrowers involved in the disallowed transactions complained that neither did they buy any property from Zialcita nor did they apply for any loan with the HDMF Region VIII.[30]

Petitioners claim that the deficiencies were trivial or inconsequential and that the notarization was not even required for the documents submitted. However, it must be pointed out that these are factual matters which the Court cannot entertain as it is outside the ambit of a *certiorari* petition.

By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies, like the COA, are in a better position to pass judgment thereon, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. It is not the task of the appellate court or this Court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding the sufficiency of evidence.[31] It is only when the agency has acted without or in excess of jurisdiction, or with grave abuse of discretion that the same may be allowed, which is clearly not applicable to the case at bar.

Petitioners also claim that the issuance of the NDs was premature as there were remedies laid down in Pag-IBIG Fund Circular Nos. 212 and 237, which they had availed of; hence, the Government had yet to incur loss or damage.

We are not convinced.

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[30] *Rollo*, p. 22.

[31] *Paraiso-Aban v. Commission on Audit*, 777 Phil. 730, 737 (2016).

The Court shares the view espoused by the COA that the availment of the remedies does not preclude it from issuing the NDs upon a finding of irregularity in the release of the loan take-outs as they are distinct from each other, subject to a separate post-audit.[32] Further, the Court opines that such remedies did not cure the irregularity of the transactions in question for which the NDs were issued. Contrary to petitioners' asseveration, the damage or loss suffered by the Government resulting from the disallowed transactions is beyond cavil.

Having discussed the propriety of the issuance of the NDs, the Court may now proceed to determine the liabilities of petitioners as the approving/certifying officers of the HDMF Region VIII, on one hand, and of Zialcita as the payee-developer, on the other hand, under the disallowed transactions.

In the recent case of *Torreta v. Commission on Audit*,[33] the Court laid down specific guidelines regarding the return of disallowed amounts under irregular government contracts, as here, to wit:

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 the 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. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.

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[32] *Rollo*, p. 153.

[33] G.R. No. 242925, November 10, 2020.

c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.

d. These rules are without prejudice to application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.

In spite of the foregoing, the Court holds that the pronouncement in *Madera v. Commission on Audit*,[34] insofar as "payees who receive undue payment, **regardless of good faith**, are liable for the return of the amounts they received" is concerned, still applies. Thus, being the recipient of the disallowed amounts in the sum of ₱13,791,000.00, Zialcita as the payee-developer has the obligation to return it, subject to the application of the principle of *quantum meruit*.

As aptly discussed in *Torreta*, the principle of *quantum meruit* is predicated on equity. Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.

By application, therefore, the monthly amortizations which have already been paid and remitted to the HDMF Region VIII by its member-borrowers covered by the disallowed transactions, should there be any, must be deducted from the total disallowed amount. Otherwise, it would be equivalent to allowing the Government to unjustly enrich itself at the expense of Zialcita.

Anent the liability of petitioners as approving/certifying officers, *Torreta* still recognizes good faith as a valid defense. Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information,

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

notice, or benefit or belief of facts which render transaction unconscientious.[35] Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.[36]

Petitioners argue that Pag-IBIG Fund Circular Nos. 212 and 237 completely shifted the responsibility to the developer with regard to the processing and approval of the housing loan applications and, by virtue of which, they acted in good faith when they relied on Zialcita's compliance therewith.

We do not subscribe to petitioners' argument which arises out of an erroneous and absurd interpretation of the provisions of the above-mentioned Circulars, as well as a misreading of the purpose behind their formulation. While it is true that, under the said Circulars, "[t]he developer shall receive, evaluate, pre-process and approve the housing loan applications of the Fund's member-borrowers x x x[,]" the COA correctly observed that the use of the term "pre-process" means further processing needs to be made.[37] This responsibility lies in the hands of the officials and employees of the Pag-IBIG Fund, such as petitioners. They have the final say on whether or not to approve the housing loan applications.

Petitioners cannot trivialize their roles in the approval of the housing loan applications and the subsequent release of the loan take-outs. Since government funds are involved, the disbursement or disposition thereof shall invariably bear their imprimatur.[38] The Window 1 — CTS/REM with Buyback Guaranty scheme under Pag-IBIG Fund Circular Nos. 212 and 237 only expedites the process in furtherance of the government's

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[35] *Development Bank of the Philippines v. Commission on Audit*, 827 Phil. 818, 833 (2018); *Philippine Economic Zone Authority (PEZA) v. Commission on Audit (COA)*, 797 Phil. 117, 139 (2016).

[36] *Zamboanga City Water District v. Commission on Audit*, 779 Phil. 225, 249 (2016).

[37] *Rollo*, p. 150.

[38] PRESIDENTIAL DECREE NO. 1445, Section 4(5).

program on housing, but not to the extent as to render petitioners' functions ministerial or perfunctory. Otherwise, petitioners would be reduced to nothing but mere "rubber stamps" of the developer.

The nonchalant stance of petitioners who admitted to having relied on Zialcita's compliance with the requirements of the aforesaid circulars implies that they merely affixed their signatures on the pertinent documents relating to the approval of the housing loan applications and the release of the loan take-outs, without actually having performed their duties of reviewing, examining, and evaluating the documents submitted to them by Zialcita.

The Court is not unaware that mere signature without anything more cannot be considered as a presumption of liability. Mere signature does not result to a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted.[39]

The exception applies in the present case. As found by the ATL and the SA, and affirmed by the COA, the irregularities and deficiencies were clear and glaring on the face of the housing loan applications and the documents attached thereto, so much so that it should have prompted petitioner Menzon, as head of the HDMF Region VIII and as the final approving authority, to scrutinize the documents presented before her. Her failure to do so makes her liable for the disallowed transactions.

Concomitantly, petitioners Jose E. Clarin (Clarin), Rengie O. Villablanca (Villablanca), Raquel R. Pomida (Pomida), and Ronsard P. Granali (Granali) should likewise be held liable based on their respective certifications as to the completeness of the supporting documents, the correctness of the entries therein, the necessity and lawfulness of the expenses incurred, and the availability of funds,[40] without which disbursement of the loan take-outs would not have been possible. It is along the same

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[39] *Joson v. Commission on Audit*, 820 Phil. 485, 502 (2017).

[40] Section 16.1.2, Chapter III of the 2009 RRSA, COA Circular No. 2009-06 dated September 15, 2009.

line of reasoning that the Court sustains COA's imposition of liability against Gatchalian and Cayobit.

Shifting the blame and responsibility solely to Zialcita constitutes gross negligence. Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless persons never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[41] It runs counter to the presumption of good faith as well as the presumption of regularity in the performance of official duties.

Having caused damage or loss to the Government, petitioners Menzon, Clarin, Villablanca, Pomida and Granali, as well as Gatchalian and Cayobit, are personally and solidarily liable with Zialcita to return the disallowed amounts, in consonance with Book VI, Chapter 5, Section 43 of the Administrative Code of 1987,[42] to wit:

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

This notwithstanding, they should not be held liable for the transactions in which they did not participate. To do so would be tantamount to grave abuse of discretion.[43]

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[41] *Republic of the Philippines v. Arias*, 743 Phil. 266 (2014).

[42] Executive Order No. 292, signed on July 25, 1987.

[43] *Lazaro, et al. v. Commission on Audit*, G.R. No. 213323, January 22, 2019.

As to petitioners Loreche, Faraon, and Pretencio, they should be excluded from the obligation to refund the amounts covered by the NDs. Loreche and Faraon were only involved in the appraisal of the properties while Pretencio only prepared the documents in connection with the release of the loan take-outs. The COA failed to prove that their work entailed the review of the documents submitted by Zialcita or that they had a hand in the approval of the housing loan applications, even through recommendatory action.

Unfortunately for Naynos and Custodio, the above ruling would not redound to their benefit, even as they are under the same circumstances. Early on, they already opted not to challenge the COA Region VIII's Decision which, among others, held them liable for the disallowed transactions. Therefore, as to them, it had long become final and executory. The Court is thus constrained to uphold the finding of liability against them.

As a final note, herein petitioners are reminded that they are officials and employees of the Government tasked to protect its interest. As custodians of government funds, it is their sworn duty to ensure that such funds are safely guarded against loss or damage, and that they are expended, utilized, disposed of or transferred in accordance with laws and regulations, and on the basis of prescribed documents and necessary records.[44]

As it stands, the scheme under Pag-IBIG Fund Circular Nos. 212 and 237 exposes the Government to high risk despite the precautionary measures provided to avert the same; therefore, it is with more reason that officials and employees of the Pag-IBIG Fund should be circumspect in the performance of their duties as to become effective instruments of the Government in improving the quality of life of every Filipino worker through decent and affordable housing.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. The Commission on Audit Decision

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[44] Section 16.1.1, Chapter III of the 2009 RRSA, COA Circular No. 2009-06 dated September 15, 2009.

No. 2018-126 dated January 26, 2018 affirming the Notice of Disallowance Nos. 2012-01 to 03(08); 2012-05 to 08(08); 2012-10 to 13(08); 2012-15 to 21(08); 2012-04(07); 2012-09(07) and 2012-14(09), all dated February 29, 2012, on the release of loan take-outs to Mr. Ray F. Zialcita, developer of Villa Perla Subdivision at Maasin City, Southern Leyte, in the total amount of ₱13,791,000.00 is **AFFIRMED with MODIFICATION**. Petitioners Flordelis B. Menzon, Jose E. Clarin, Rengie O. Villablanca, Ronsard P. Granali and Raquel R. Pomida, as well as Leonora P. Gatchalian, Ma. Carmel Cayobit, Emelito Naynos and Nelson T. Custodio, are held **SOLIDARILY LIABLE** with Ray F. Zialcita to **REFUND** the amounts covered by the notices of disallowance, subject to the application of the principle of *quantum meruit*, but only with respect to transactions in which they had each participated. Meanwhile, petitioners Rizalito T. Loreche, Mark Anthony G. Faraon and Emily B. Pretencio are **ABSOLVED** from the liability to refund.

Accordingly, the case is hereby **REMANDED** to the Commission on Audit for the computation of the amounts due from each person liable.

SO ORDERED.

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

Gesmundo and *Lopez, JJ.*, on official leave.

THIRD DIVISION

[G.R. No. 241779. December 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ALBERTO PEREZ y ESABIDRA,** *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

DELOS SANTOS, *J.*:

The Case

This appeal assails the Decision[1] dated September 8, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07880 affirming Alberto Perez *y* Esabidra's (accused-appellant) conviction for Slight Physical Injuries and Murder.

The Proceedings Before the Trial Court

The Charges

Two separate *Informations* for Frustrated Murder and Murder were filed against accused-appellant, *viz.*:

Criminal Case No. 2007-852

That on or about the 14th day of July 2007, at Barangay Matipunso, Municipality of San Antonio, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with intent to kill, qualified by treachery and superior strength, did then and there willfully, unlawfully and feloniously attack, assault, and stab with said knife one ANASTACIA LANDICHO y PEREZ, who was then 63 years old, thereby inflicting

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Magdangal M. De Leon and Franchito N. Diamante, concurring; *rollo*, pp. 2-15.

upon the latter "punctured wound" on her left breast, thus performing all the acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical attendance rendered to said Anastacia P. Landicho, which prevented her death.

CONTRARY TO LAW.[2]

Criminal Case No. 2007-853

That on or about the 14th day of July 2007, at Sitio Gulugod Baboy, Barangay Matipunso, Municipality of San Antonio, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with intent to kill, qualified by treachery, did then and there willfully, unlawfully and feloniously attack, assault and repeatedly stab with said knife one DOMINGO PEREZ LANDICHO, who was then sleeping inside their house, thereby inflicting upon the latter multiple wounds on different parts of his body, which directly caused his instant death.

CONTRARY TO LAW.[3]

On arraignment, accused-appellant pleaded not guilty to both charges. Joint trial ensued.

The Prosecution's Version

Domingo Landicho (Domingo) is the son of Anastacia Landicho (Anastacia). Accused-appellant is the grandson of Anastacia's sister.

On July 14, 2007, around 8:00 in the evening, victims Anastacia and Domingo were at their house in Matipunso, San Antonio, Quezon. Accused-appellant came to their house and asked permission to watch television. Anastacia was used to this since accused-appellant always watched television in her house. Being the grandson of victim Anastacia's sister, accused-appellant was also well-known to her.[4]

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[2] Id. at 4.

[3] Id. at 4-5; CA *rollo*, p. 43.

[4] *Rollo*, pp. 2-3.

Together, accused-appellant and Anastacia watched the television. At the time, Domingo was sound asleep in the kitchen. Accused-appellant asked for water so Anastacia went to the kitchen. As she was getting water, she turned around and witnessed accused-appellant in the act of stabbing her sleeping son, Domingo, with a knife. She asked him, *"Why did you do that to my son[,] when he was doing nothing and just sleeping?"* Accused-appellant then turned his attention to Anastacia and attacked her with the knife he was holding. Anastacia was hit in her left breast but she was able to evade the full force of the attack. Domingo then declared that he was struck, to which Anastacia answered that she was stabbed herself too.[5]

Anastacia shouted for help but accused-appellant ran away before anyone could arrive. Her daughter-in-law Mary Jane Landicho (Mary Jane), who was then sleeping in her own house nearby, was awakened by Anastacia's shouts for help. Alarmed, she immediately went to Anastacia's house and saw the latter carrying the bloody body of Domingo. She observed that there was blood coming out of their bodies and Domingo appeared to have been disemboweled because his intestines were falling out.[6] Anastacia told her that it was accused-appellant who stabbed both of them. She asked for help from their neighbors but no one came to their aid. Domingo thereafter died.[7]

Brgy. Chair Ruben Mendoza (Brgy. Chair Ruben) was informed about the stabbing incident by a Tanod named Bienvenido. He reported the incident to the police officers. When he arrived at the house of Anastacia, he saw the body of Domingo and then talked to Anastacia.[8] Anastacia recalls that it was Brgy. Chair Ruben who brought her to the hospital.[9]

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[5] Id. at 3.

[6] Id.

[7] Id. at 3-4.

[8] TSN, May 12, 2009, p. 4.

[9] TSN, September 30, 2008, pp. 9-11.

The result of Domingo's post-mortem examination conducted by Dr. Wilma Laroza (Dr. Laroza) shows that he suffered five (5) stab wounds on the chest and abdomen which eventually caused shock and severe hemorrhage resulting in his death. On the other hand, Dr. Joseph Palmero (Dr. Palmero), the physician who examined Anastacia, found that the latter sustained a punctured wound on the left breast which was not penetrating and non-fatal.[10]

Anastacia failed to present receipts of her hospitalization and medical expenses as well as the expenses she incurred for Domingo's burial and funeral service.[11]

The Defense's Version

Accused-appellant denied both charges. He testified that he was a resident of Brgy. Matipunso, San Antonio, Quezon when he was still single but moved to Balintawak, Caloocan City when he got married in 1994. He claimed that he was in his house in Bulacan with his family on July 14, 2007, when the stabbing incident happened.[12]

Accused-appellant's wife Thelma Perez (Thelma) corroborated his alibi. She testified that accused-appellant was with her in their house in Brgy. Masagana, Pandi, Bulacan on July 14, 2007.[13]

The Trial Court's Ruling

By Joint Decision[14] dated August 27, 2015, the trial court rendered a verdict of conviction against accused-appellant for Slight Physical Injuries and Murder, *viz.*:

WHEREFORE, premises considered, the accused is found by this Court guilty beyond reasonable doubt of a crime of Murder under **Criminal Case No. 2007-853** and hereby imposes upon him a penalty

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[10] *Rollo*, p. 4.

[11] CA *rollo*, p. 47.

[12] TSN, February 24, 2015, p. 5.

[13] TSN, March 10, 2015, pp. 4-7.

[14] Penned by Presiding Judge Agripino R. Bravo; CA *rollo*, pp. 45-55.

of "**RECLUSION PERPETUA,**" and to pay the heirs of the victim, the following:

(a) [₱]50,000.00 as moral damages;
(b) [₱]50,000.00 as indemnity; and
(c) [₱]25,000.00 by way of temperate damages;
(d) Cost of suit.

In **Criminal Case No. 2007-852** for slight physical injuries, this Court imposes upon the accused a penalty of **ARRESTO MENOR**, and to pay private complainant the following:

(a) [₱]3,000.00 as actual damages;
(b) [₱]10,000.00 as moral damages; and
(c) Cost of suit.

SO ORDERED.[15]

The trial court held that Anastacia could not have been mistaken as to the identity of the person who killed her son Domingo and inflicted wound upon her. *First*, although it happened at nighttime, there was power supply as accused-appellant and Anastacia watched television. *Second*, Anastacia knew accused-appellant being the grandson of her own sister and a neighbor as well. *Lastly*, before the stabbing incident, Anastacia had a face-to-face interaction with accused-appellant.[16]

The trial court further held that there was no ill motive on the part of Anastacia to falsely implicate accused-appellant in the cases. Moreover, Anastacia's claim was corroborated by Mary Jane who testified that when she arrived at the crime scene, Anastacia told her that it was accused-appellant who stabbed her and her son Domingo.[17]

Lastly, the trial court found that the killing of Domingo was attended by treachery. He was not in a position to defend himself at the time of attack. Thus, accused-appellant is guilty of Murder for his death. On the other hand, for the attack and the wound

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[15] Id. at 55.

[16] Id. at 53.

[17] Id. at 54.

sustained by Anastacia, the trial court found accused-appellant guilty of Slight Physical Injuries only.[18]

The CA's Ruling

In a Decision[19] dated September 8, 2017 the CA affirmed accused-appellant's conviction for both crimes of Slight Physical Injuries and Murder with modification as to the awards of damages.

The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the *Appeal* filed by Alberto Perez y Esabidra on 10 September 2015 is **DENIED**. The *Joint Decision* rendered by Branch 55 of the Regional Trial Court of Lucena City on 27 August 2015 in Criminal Cases No. 2007-852 and No. 2007-853 is *AFFIRMED* with *MODIFICATION*. In accord with recent jurisprudence, the awards of moral damages and civil indemnity in Criminal Case No. 2007-853 are each increased to PHP75,000.00, while an award of exemplary damages in the amount of PHP75,000.00 is bestowed in addition to the temperate damages already imposed by the trial court *a quo*. In Criminal Case No. 2007-852, the award of actual damages is deleted for the failure to present proof of the expenses relating to the injuries sustained, while the amount of moral damages is reduced to PHP50,000.00. All amounts of damages awarded shall earn interest at the legal rate of 6% per annum commencing from the date of finality of judgment until fully paid.
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> **SO ORDERED**.[20]

The Present Appeal

Accused-appellant now seeks affirmative relief from this Court and prays anew for his acquittal. He assails the sufficiency of evidence relied upon for his conviction. He particularly challenges the credibility of eyewitness victim Anastacia who allegedly gave testimony inconsistent with the testimonies of other prosecution witnesses. He also claims that he was present

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[18] Id. at 54-55.

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

[20] Id. at 13-14.

somewhere else when the stabbing incident happened in the house of Anastacia on July 14, 2007.

Issue

The issue for the Court's resolution is whether or not the CA erred in affirming accused-appellant's conviction for Slight Physical Injuries and Murder.

The Court's Ruling

The appeal lacks merit.

Accused-appellant challenges in the main his conviction for Murder. He faults both the trial court and the CA for giving credence to the testimony of victim Anastacia despite its inconsistencies with the testimonies of other prosecution witnesses, allegedly casting doubt on her credibility and the veracity of her claims.

The Court stressed in *People v. Gerola*:[21]

> The assessment of the credibility of witnesses is a task most properly within the domain of trial courts. In *People v. Gahi*, the Court stressed that the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the case at hand.[22] (Citations omitted)

Anastacia positively identified accused-appellant as the person who stabbed her and her son Domingo causing the latter's death. She testified that she saw accused-appellant in the act of stabbing her son Domingo who was then sleeping. When she asked him why he stabbed Domingo, she was herself attacked and strucked by him in the chest, *viz.*:

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[21] 813 Phil. 1055 (2017).

[22] Id. at 1063-1064.

Direct examination
Q And where did Alberto Perez watch TV?
A In our house sir, he sat beside me.

Q How about your son Domingo where was he at that time?
A He was then sleeping at the kitchen sir.

Q While you were watching TV with Alberto what transpired next, if any?
A He requested for water and when I was then getting water from our kitchen Alberto Perez followed me and after a while I saw him already stabbing my son who was then sleeping sir.[24]

x x x x x x x x x

Q Were you able to talk to your son after he was stabbed by Alberto?
A I was not able to talk with him sir.

COURT:
Q Did he say anything?
A He did not say anything your honor except the words "ako'y may tama" and I answered "ako din."[25]

x x x x x x x x x

Q How many times did Alberto stab your son?
A Only one sir but his intestine came out.[26]

x x x x x x x x x

Q Then what did Alberto do, if any after he stabbed Domingo?
A After Alberto hit my son and I uttered the words "why did he do that to my son," he turned his attention to me, pulled out the knife, turned his attention towards me and hit me sir.

COURT:
Q Were you hit?
A Only a little your honor because I was able to evade it.[27]

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[24] TSN, September 30, 2008, p. 6.

[25] Id. at 7.

[26] Id.

[27] Id. at 8.

x x x x x x x x x

COURT:
Q Which part of your body was injured by the accused?
A On my left breast your honor.[28]

x x x x x x x x x

Q What happened to your son after the incident?
A He died sir.[29]

x x x x x x x x x

Cross-examination
Q Madam Witness, you said that you saw Alberto Perez stab your son, Domingo; where did he get the knife, Madam Witness?
A I don't know, mam. I don't know where the said knife came from because what I saw was, when I was getting a glass of water, when I looked back, I saw that he was already stabbing my son.[30]

x x x x x x x x x

COURT:
Q Were you surgically operated at that hospital?
A No, Your Honor, because the wound I sustained was just superficial.

Place the vernacular "mababaw," x x x.[31]

Accused-appellant expectedly impugns the credibility of Anastacia and her testimony. He particularly puts in controversy her testimony with respect to (1) the number of times Domingo was stabbed, which appeared to be inconsistent with the testimony of Dr. Laroza, who conducted the post-mortem examination on Domingo's body, and (2) her claim that it was Brgy. Chair Ruben who brought her to the hospital which seemed to be

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[28] Id. at 9.

[29] Id.

[30] TSN, November 25, 2008, p. 3.

[31] Id. at 6.

inconsistent with the latter's testimony that his participation was limited to reporting the stabbing incident to the police officers.

True, there appears to be some inconsistencies between the testimony of Anastacia on one hand and the testimonies of Dr. Laroza and Brgy. Chair Ruben on the other. Anastacia testified that Domingo was stabbed only once by accused-appellant while Dr. Laroza testified that Domingo sustained five (5) stab wounds.[32] She also testified that it was Brgy. Chairman Ruben who brought her to the hospital while the latter testified that his participation in the case was limited to reporting the incident to the police officers.[33] These inconsistencies, however, do not pertain to substantial details so as to discredit Anastacia and her testimony and thus arouse doubt as to the culpability of accused-appellant to the crimes charged.

The inconsistencies here merely refer to minor details which do not diminish the probative value of the testimony at issue.[34] The fact remains that Anastacia saw accused-appellant with her own two eyes in the act of stabbing her son Domingo and was herself stabbed by him thereafter.

More, Anastacia cannot be expected to testify that she saw accused-appellant stab Domingo five (5) times when what she actually only witnessed was accused-appellant's act of delivering the last fatal stab to Domingo and the attack to herself. The Court likewise notes that Brgy. Chair Ruben's claim that his participation was limited to reporting the incident to the police officers did not entirely negate the possibility that he indeed brought victim Anastacia to the hospital. In fact, he testified that he was fetched by a Tanod named Bienvenido who informed him about the stabbing incident in the house of Anastacia. When he arrived at Anastacia's house, he saw the body of deceased

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[32] TSN, September 30, 2008, p. 7; TSN, February 15, 2011, p. 4.

[33] Id. at 9; TSN, May 12, 2009, p. 7.

[34] See *People v. Mat-an*, G.R. No. 215720, February 21, 2018, 856 SCRA 282.

Domingo and was able to talk to Anastacia.[35] Certainly, his participation in the case was not actually strictly limited to reporting the incident to the police officers. Thus, both the trial court and the CA did not err in giving full faith and credence to Anastacia's testimony.

Notably, accused-appellant himself did not accuse Anastacia of any ill motive to falsely implicate him in the serious crimes of Murder and Frustrated Murder (as charged).

Verily, no cogent reason exists which would justify the reversal of the trial court's assessment on the credibility of Anastacia and her testimony, as affirmed by the CA. It is well settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellant. Minor inconsistencies therein cannot destroy her credibility.[36]

The CA therefore did not err in affirming accused-appellant's conviction for both Slight Physical Injuries and Murder.

Murder is defined and penalized under Article 248 of the Revised Penal Code (RPC), as amended, *viz.*:

ART. 248. *Murder*. Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity[.] (Emphasis ours)

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.[37]

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[35] TSN, May 12, 2009, p. 4.

[36] See *People v. Mat-an*, *supra* note 34.

[37] *People v. Gaborne*, 791 Phil. 581, 592 (2016).

Here, all these elements were present. *First*, Domingo was killed, *Second*, it was established that accused-appellant killed him. *Third*, the killing was attended by treachery, a qualifying circumstance. *Lastly*, the killing is not parricide or infanticide.

The killing of Domingo was qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to himself arising from the defense that the offended party might make.[38]

We have ruled that treachery is present when an assailant takes advantage of a situation in which the victim is asleep, unaware of the evil design, or has just awakened.[39] In the instant case, it was established by the prosecution that Domingo was sleeping, unaware of accused-appellant's evil design, when he was stabbed by him causing his death. Clearly, Domingo was not in a position to defend himself from accused-appellant's attack. The killing being qualified by treachery, accused-appellant is thus guilty of Murder.

On the other hand, with respect to the attack and injury suffered by Anastacia, accused-appellant can only be held liable for Slight Physical Injuries and not Frustrated Murder. The crime of Frustrated Murder requires that accused-appellant intended to kill Anastacia. The prosecution, however, failed to establish this as a fact. Too, Dr. Palmero, the physician who examined Anastacia, testified that she only suffered a non-fatal wound. Without the element of intent to kill, accused-appellant can only be convicted for physical injury. And considering that Anastacia's wound was only superficial or *"mababaw,"* the CA correctly upheld accused-appellant's conviction for Slight Physical Injuries.[40]

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[38] *People v. Dearo*, 719 Phil. 324, 334 (2013).

[39] Id.

[40] See *People v. Mat-an*, supra note 34.

In an attempt to exculpate himself from both charges, accused-appellant claims that he was in Bulacan with his family on July 14, 2007 when the stabbing incident happened in the house of Anastacia in Matipunso, San Antonio, Quezon. This was corroborated by his wife Thelma who testified that he was then with her in their house in Bulacan.

The Court rejects the defense of denial and alibi proffered by accused-appellant.

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.[41]

Here, accused-appellant failed to establish that it was physically impossible for him to be in the house of Anastacia at the time of the stabbing incident. According to him, it takes a six (6)-hour commute to get to Brgy. Matipunso, San Antonio, Quezon, where the stabbing incident happened, from Bulacan, where he was allegedly present during the incident.

In *People v. San Agustin*,[42] this Court held that a five (5)-hour travel time would not make it physically impossible for appellant to be present in Laguna from Cavite and thereat rape his victim. In the instant case, *We* likewise find that a six (6)-hour commute or travel time from Bulacan to Brgy. Matipunso, San Antonio, Quezon, did not make it physically impossible for herein accused-appellant to be present in the house of Anastacia in Brgy. Matipunso, San Antonio, Quezon at 8:00 in the evening of July 14, 2007 if he left Bulacan on or before 2:00 in the afternoon of the same day.

More, *We* have consistently assigned less probative weight to a defense of *alibi* when it is corroborated by relatives, as in this case where accused-appellant's alibi was corroborated only by his wife Thelma. *We* have established in jurisprudence that,

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[41] *People v. Corpuz*, 714 Phil. 337, 346 (2013).

[42] 403 Phil. 93 (2001).

in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses.[44] Being accused-appellant's wife, Thelma cannot be considered as a disinterested witness.

Accordingly, as between Anastacia's categorical and positive identification of accused-appellant as the person who stabbed her and her son Domingo on one hand and accused-appellant's inherently weak denial and alibi on the other, the former prevails.

The Penalty and Damages

In Criminal Case No. 2007-852, there being no aggravating or mitigating circumstance present, the penalty shall be imposed in its medium period or twenty (20) days of *arresto menor*, following Article 266 of the RPC. The Court likewise finds it proper to award moral damages to Anastacia in the amount of ₱5,000.00.[46] Since only Slight Physical Injury was committed in Criminal Case No. 2007-852 and no proof of medical expenses was presented during trial, the CA correctly deleted the award of temperate damages.[47]

In Criminal Case No. 2007-853, other than the circumstance of treachery which already qualified the crime to Murder, no other modifying circumstance is present whether aggravating or mitigating. Thus, the penalty of *reclusion perpetua* is imposed in accordance with Article 248 of the RPC, as amended, in relation to Article 63 (2) of the RPC.[48] The Court finds the awards of civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, and exemplary damages in the amount of ₱75,000.00 to the heirs of Domingo proper, in line with recent jurisprudence.[49]

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[44] *People v. Pulgo*, 813 Phil. 205, 219 (2017).

[46] See *People v. Mat-an*, supra note 34.

[47] See *People v. Lagman*, 685 Phil. 733, 750 (2012).

[48] See *People v. Mat-an*, supra note 34.

[49] See *People v. Jugueta*, 783 Phil. 806 (2016).

Prevailing jurisprudence also dictates that in Homicide or Murder cases, when no evidence of burial or funeral expenses is presented in court, as in this case, an award of ₱50,000.00 as temperate damages in lieu of actual damages shall be awarded. Thus, *We* increase the award of temperate damages to the heirs of Domingo to ₱50,000.00.[50]

WHEREFORE, the Appeal is **DISMISSED**. The Decision dated September 8, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07880 is **AFFIRMED with MODIFICATIONS**. The Court finds accused-appellant Alberto Perez *y* Esabidra **GUILTY** beyond reasonable doubt of:

1. **SLIGHT PHYSICAL INJURY** in Criminal Case No. 2007-852 and is sentenced to suffer the straight penalty of twenty (20) days of *arresto menor*. Accused-appellant is ordered to pay Anastacia Landicho (a) moral damages in the amount of ₱5,000.00, and (b) costs of suit.

2. **MURDER** in Criminal Case No. 2007-853 and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is ordered to pay the heirs of Domingo Landicho (a) civil indemnity in the amount of ₱75,000.00, (b) moral damages in the amount of ₱75,000.00, (c) exemplary damages in the amount of ₱75,000.00, (d) temperate damages in the amount of ₱50,000.00, and (e) costs of suit.

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

SO ORDERED.

Leonen (*Chairperson*), *Hernando, Inting,* and *Rosario, JJ.*, concur.

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[50] *Id.*

THIRD DIVISION

[G.R. No. 242278. December 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **CHRISTIAN MANUEL *y* VILLA,** *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

DELOS SANTOS, *J.*:

The Case

This ordinary appeal challenges the Decision[1] dated April 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08616, which affirmed the Judgment[2] dated July 15, 2016 of the Regional Trial Court (RTC) of Manila, Branch 9 in Crim. Case Nos. 11-288374-78, finding accused-appellant Christian Manuel *y* Villa (accused-appellant) guilty beyond reasonable doubt of Acts of Lasciviousness, Attempted Qualified Rape, Qualified Rape, and Qualified Rape by Sexual Assault.

The Antecedents

Accused-appellant's conviction arose from the following sets of Information, *viz.*:

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Manuel M. Barrios and Renato C. Francisco, concurring.

[2] Records, pp. 143-153; penned by Presiding Judge Jacqueline S. Martin-Balictar.

Criminal Case No. 11[-]288374

That on or about June 15, 2009, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA],[3] a **minor, 9 years old**, and/or common[-]law husband of [BBB], with lewd design, did then and there willfully, unlawfully and feloniously commit acts of lasciviousness upon the person of [AAA], by then and there directing her to hold his penis and moving it up and down, against her will and without her consent. (Emphasis supplied)

CONTRARY TO LAW.[4]

Criminal Case No. 11[-]288375

That on or about June 27, 2009, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], a **minor, 9 years old**, and/or common[-]law husband of [BBB], with lewd design, did then and there willfully, unlawfully and feloniously commence the commission of the crime of rape directly by overt acts, to wit: by then and there suddenly removing the shorts and panty of said [AAA], and forcibly trying to place his penis into her vagina, with the evident intent of having carnal knowledge with her, all against her will and consent, but said [accused-appellant] did not perform all the acts of execution which should have produced the crime of rape by reason of some cause or accident other than his own spontaneous desistance, that is, by the act of said [AAA] of kicking the herein [accused-appellant] causing him to return to the original place where he was then sleeping. (Emphasis supplied)

CONTRARY TO LAW.[5]

Criminal Case No. 11[-]288376

That sometime [i]n August 2010, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], **a**

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[3] In conformity with Administrative Circular No. 83-2015 (*Subject Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names/Personal Circumstances*), the complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or resolution, have been replaced with fictitious initials.

[4] Records, p. 2.

[5] Id. at 3.

minor, 11 years old, and/or common[-]law husband of [BBB], mother of said [AAA], did then and there willfully, unlawfully and feloniously have carnal knowledge upon said [AAA], by then and there making her lie sideways and thereafter, inserting his penis [i]nto her vagina, touching lightly its hole/[*labia*]. (Emphasis supplied)

CONTRARY TO LAW.[6]

Criminal Case No. 11[-]288377

That sometime [sic] on the third Saturday of August 2010, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], **a minor, 11 years old**, and/or common[-]law husband of [BBB], mother of [AAA], did then and there willfully, unlawfully and feloniously have carnal knowledge upon said [AAA], by then and there pulling her, removing her clothes and shorts, making her lie sideways, and forcibly inserting his penis [into] her vagina. (Emphasis supplied)

CONTRARY TO LAW.[7]

Criminal Case No. 11[-]288378

That on or about June 28, 2009, in the City of Manila, Philippines, the said [accused-appellant], being then the stepfather of [AAA], **a minor, 9 years old**, and/or common[-]law husband of [BBB], mother of [AAA], did then and there willfully, unlawfully and feloniously commit sexual assault upon said [AAA], by then and there making her hold his penis and putting it inside her mouth, against her will and consent, to her damage and prejudice. (Emphasis supplied)

CONTRARY TO LAW.[8]

Accused-appellant pleaded not guilty to all charges. Thereafter, trial on the merits ensued.

Version of the Prosecution

The evidence of the prosecution comprised of the testimonies of the minor victim, AAA, and her mother, BBB. Their testimonies sought to establish the following:

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[6] Id. at 4.

[7] Id. at 5.

[8] Id. at 6.

AAA is the daughter of BBB from a previous relationship. AAA was born on July 13, 1999, and was only 3 years old when BBB lived with her common-law husband, herein accused-appellant. At the time of the incidents, they all resided in [redacted], Manila, together with BBB's two children with accused-appellant.[9]

AAA narrated that the first incident occurred on June 15, 2009 when she was 9 years old. While she was sleeping, accused-appellant sat beside her and made her hold his penis, guiding her hand in upward and downward movements. The act lasted for about 20 minutes until she resisted by kicking him.[10]

AAA recalled that on June 27, 2009, accused-appellant forcibly removed her shorts and underwear while she was sleeping. Accused-appellant then went on top of her, held her hands and feet, and tried to insert his penis into her vagina. However, she successfully resisted his sexual advances by pushing and kicking him.[11] The following night, or on June 28, 2009, accused-appellant forced AAA to hold his penis and insert it into her mouth. Owing to her resistance by pushing and kicking him, his penis merely touched her mouth.[12]

Sometime in August 2010, accused-appellant successfully ravished AAA. After removing her shorts and underwear, accused-appellant made her lie sideways and forcibly inserted his penis into her vagina, overpowering her resistance.[13]

On September 1, 2010, AAA told her mother that accused-appellant sexually molested her. The following morning, they reported the incidents to the police station. AAA was then referred to the Child Protection Unit of the Philippine General Hospital

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[9] TSN, January 11, 2016, pp. 9-10.

[10] TSN, June 3, 2016, pp. 7-9.

[11] Id. at 11-15.

[12] Id. at 25-27.

[13] Id. at 23-25.

(CPU-PGH) and to the care of the Department of Social Welfare and Development.[14]

BBB declared that her daughter developed depression and exhibited an unusual behavior. Sometimes AAA would go berserk and curse at herself. Since 2011, they went to CPU-PGH thrice for her treatment.[15]

In a Provisional Medico-Legal Report[16] dated September 7, 2010, Dr. Stella Manalo of the CPU-PGH indicated the following:

IMPRESSIONS

No evident injury at the time of the examination but medical evaluation cannot exclude sexual abuse. Acute Tonsillopharyngitis, exudative.

Version of the Defense

The defense presented accused-appellant as its lone witness. Accused-appellant declared that he and BBB were not married, but they were living as husband and wife for about 10 years. AAA, BBB's daughter from a previous relationship, lived with them, together with accused-appellant's two children with BBB. Accused-appellant admitted having exercised parental authority over AAA when she was just 3 years old, and treated her as his own daughter.[17]

Interposing denial, accused-appellant argued that it was impossible for him to have molested or raped AAA inside their house, which he claimed to be mere shanty covering a very small area, where they all slept together, *i.e.*, accused-appellant slept beside his two children, while AAA slept beside her mother, BBB.[18]

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[14] *Rollo*, p. 5.

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

[16] Records, pp. 15-16.

[17] TSN, March 21, 2016, pp. 15-18.

[18] Id. at 11-12 and 18.

The RTC Ruling

In its Judgment[19] dated July 15, 2016, the RTC convicted accused-appellant of Acts of Lasciviousness under Article 336 of the Revised Penal Code (RPC) in Criminal Case No. 11-288374, Attempted Qualified Rape in Criminal Case No. 11-288375, Qualified Rape in Criminal Case No. 11-288377 and Qualified Rape by Sexual Assault in Criminal Case No. 11-288378. However, it acquitted accused-appellant of the charge of Rape in Criminal Case No. 11-288376 for failure to prove his guilt beyond reasonable doubt. The *fallo* of the Decision reads:

WHEREFORE, accused is hereby found:

GUILTY beyond reasonable doubt of ACTS OF LASCIVIOUSNESS, defined and penalized under Article 336 of the Revised Penal Code, in Criminal Case No. 11[-]288374. He is sentenced to suffer the indeterminate penalty of 5 months and 10 days of [*Arresto Mayor*] medium as minimum, to 4 years and 2 months of [*Prision Correccional*] [m]edium as maximum, and is ORDERED to pay the victim P75,000[.00] as civil indemnity, P75,000[.00] as moral damages, and P30,000[.00] as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

GUILTY beyond reasonable doubt of ATTEMPTED QUALIFIED RAPE, defined and penalized under Article 266-A, in relation to Article 6 of the Revised Penal Code in Criminal Case No. 11[-]288375. He is sentenced to suffer the indeterminate penalty of 6 years[,] 2 months and 1 day of [*Prision Mayor*] minimum as minimum, to 18 years and 2 months of [*Reclusion Temporal*] maximum as maximum and is ORDERED to pay the victim P30,000.00 as civil indemnity, P25,000.00 as moral damages and P10,000.00 as exemplary damages, plus interest at 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

GUILTY beyond reasonable doubt of QUALIFIED RAPE under Article 266-A paragraph [1(d)] of the Revised Penal Code in Criminal Case No. 11[-]288377. He is sentenced to suffer the [indeterminate] penalty of *RECLUSION PERPETUA* without eligibility for parole,

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[19] Supra note 2.

and is ORDERED to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000[.00] as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

GUILTY beyond reasonable doubt of QUALIFIED RAPE BY SEXUAL ASSAULT under Article 266-A[,] paragraph 2 of the Revised Penal Code in Criminal Case No. 11[-]288378. He is sentenced to suffer the indeterminate penalty of 10 years of [*Prision Mayor*] as minimum, to 17 years [and] 4 months of [*Reclusion Temporal*] as maximum, and is ORDERED to pay the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages, and P30,000[.00] as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.

Accused is ACQUITTED of the crime of Rape under Article 266-A, paragraph [1(d)] of the Revised Penal Code under Criminal Case No. 11[-]288376, for lack of evidence to prove guilt beyond reasonable doubt.

SO ORDERED.[20]

The RTC held that AAA gave a detailed and credible narration of her sexual ordeal, positively identifying accused-appellant as the perpetrator who consummated the sexual acts against her will. Taking into consideration the child's very young age at the time of the incidents, the RTC was persuaded of her candor and sincerity throughout the trial and even during her cross-examination. The RTC also underscored that the lack of specific injuries on AAA's genital and hymen did not negate her claim of rape and sexual abuse, holding that a medical examination of the victim is merely corroborative in character and is not essential to a conviction.

Aggrieved, accused-appellant appealed to the CA challenging AAA's credibility. Accused-appellant maintained that it was impossible for him to have sexually molested and raped AAA in their house where they were sleeping, together with his wife and two children. To him, they would have been easily awakened by any slight movement. He added that AAA's behavior of

[20] Records, pp. 152-153.

staying in the same house with her supposed violator after the alleged three incidents of sexual abuse and rape is uncharacteristic of a sexually-abused or raped victim. Lastly, accused-appellant argued that the lack of definitive statement in the medical findings on AAA that she had been raped or sexually abused belied her claims.

The CA Ruling

In its Decision[21] dated April 26, 2018, the CA affirmed accused-appellant's conviction in Criminal Case Nos. 11-288375, 11-288377 and 11-288378 for Attempted Qualified Rape, Qualified Rape and Qualified Rape by Sexual Assault, respectively, with modification as regards the penalties imposed and damages awarded. In Criminal Case No. 11-288374, the CA convicted accused-appellant of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of Republic Act (R.A.) No. 7610, otherwise known as the *Special Protection of Children Against Abuse, Exploitation and Discrimination Act*. The *fallo* of the Decision reads:

> WHEREFORE, the *Appeal* is hereby DENIED. The *Judgment* dated 15 July 2016 of the Regional Trial Court of Manila, Branch 9, is AFFIRMED with MODIFICATIONS to [read] as follows:
>
> 1. Criminal Case No. 11[-]288374 *(Acts of Lasciviousness) under Article 336 of the Revised Penal Code in relation to Section 5(b), Article III of RA No. 7610*. Accused-appellant CHRISTIAN MANUEL *y* VILLA is sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day of *reclusion temporal*, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal*, as maximum. He is further ordered to pay AAA, the amounts of P20,000.00 as civil indemnity, P15,000.00 as moral damages, P15,000.00 as exemplary damages, and P15,000.00 as fine.
> 2. Criminal Case [No.] 11[-]288375 *(Attempted Qualified Rape under Article 266-A in relation to Article 6 of the Revised Penal Code)*. Accused-appellant CHRISTIAN MANUEL *y* VILLA, is sentenced to suffer the indeterminate penalty of imprisonment

[21] Supra note 1.

for six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. He is further ordered to pay AAA, the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P30,000.00 as exemplary damages.

3. Criminal Case [No.] 11[-]288377 *(Qualified Rape under Article 266-A in relation to Article 266-B(1) of the Revised Penal Code)*. Accused-appellant CHRISTIAN MANUEL *y* VILLA is ordered to pay AAA, the amount of P100,000.00 each as civil indemnity, moral damages and exemplary damages.

4. Criminal Case [No.] 11[-]288378 *(Qualified Rape by Sexual Assault under Article 266-A(2) in relation to Article 266-B(1) of the Revised Penal Code)*. Accused-appellant CHRISTIAN MANUEL *y* VILLA is ordered to pay AAA the amount of P100,000.00 each as civil indemnity, moral and exemplary damages.

All damages awarded shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

SO ORDERED.[22]

As did the RTC, the CA gave paramount weight to the testimony of AAA, finding the same to be straightforward and consistent. It debunked accused-appellant's assertions which purportedly tainted her testimony as regards her behavior during and after the alleged incidents, and the lack of definitive medical findings that she had been raped and sexually abused.

Hence, this appeal.

For purposes of this appeal, the Public Attorney's Office[23] and the Office of the Solicitor General[24] manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

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[22] Records, pp. 121-122.

[23] *Rollo*, p. 37.

[24] Id. at 33.

In this appeal, accused-appellant once again raised the following assignment of errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED NOTWITHSTANDING THE INCREDIBILITY OF THE TESTIMONIES AND QUESTIONABLE BEHAVIOR OF THE PROSECUTION WITNESSES, WHICH PUT GRAVE AND SERIOUS DOUBTS ON THEIR CREDIBILITY.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF [QUALIFIED RAPE] AS THERE IS NO CONCLUSIVE FINDING THAT HE RAPED AAA.

III.

THE COURT *A QUO* GRAVELY ERRED IN NOT CONSIDERING THE ACCUSED-APPELLANT'S DEFENSES.[25]

The Court's Ruling

The appeal is devoid of merit.

Criminal Case No. 11-288374
Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610

In Criminal Case No. 11-288374, the RTC convicted accused-appellant of Acts of Lasciviousness plainly under Article 336 of the RPC. On appeal, the CA underscored that AAA was 9 years of age at the time of the incident and, thus, held him guilty of the crime of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. No. 7610, which defines and penalizes Acts of Lasciviousness committed against a child under 12 years old,[26] as follows:

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[25] CA *rollo*, pp. 29-30.

[26] *People v. Caoili*, 815 Phil. 839, 886 (2017).

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.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x 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 (Emphases and underscoring supplied)

Reduced to its elements, sexual abuse under the provision presupposes the concurrence of the following:

(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**.[27] (Emphases supplied)

On the other hand, the elements of Acts of Lasciviousness under Article 336 of the RPC are as follows:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done 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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[27] *Garingarao v. People*, 669 Phil. 512, 523 (2011).

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

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; and

(3) That the offended party is another person of either sex.[28] (Emphasis supplied)

As correctly found by the CA, all the elements are present in this case.

The prosecution sufficiently established the element of "lascivious conduct," which is defined as "the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus, or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, **masturbation**, lascivious exhibition of the genitals or pubic area of a person."[29] Records show that AAA positively testified that on June 15, 2009, accused-appellant instructed her to masturbate him, by making her hold his penis and guiding her hand in upward and downward motions, which lasted for about 20 minutes.[30]

The second and third elements require that the victim was either exploited in prostitution or subjected to other sexual abuse, and that she is a child as defined under R.A. No. 7610.[31] By "other sexual abuse" is meant to cover not only a child who is abused for profit, but also in cases where a child was engaged in lascivious conduct through the coercion or intimidation by an adult.[32] Intimidation must be viewed in the light of the victim's

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[28] *Quimvel v. People*, 808 Phil. 889, 914 (2017).

[29] Implementing Rules and Regulations of R.A. No. 7610, Section 2, paragraph (h).

[30] Supra note 10.

[31] *People v. Abello*, 601 Phil. 373, 393 (2009).

[32] *Olivarez v. Court of Appeals*, 503 Phil. 421, 432 (2005).

perception and judgment at the time of the commission of the crime,[33] taking into consideration the age, size and strength of the parties.[34] Intimidation need not be irresistible;[35] it suffices that some form of compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the victim.[36]

As disclosed by her birth certificate,[37] AAA was 9 years old at the time of the incident. Also, as admitted by accused-appellant, he was the common-law husband of AAA's mother. As a close kin of the child, actual force or intimidation need not be employed by him.[38] Here, it is enough that fear was undoubtedly produced in the mind of the child victim AAA, whose innocent age of 9 years at the time of the incident clearly made her vulnerable and easily intimidated by accused-appellant, whom she had known and identified as her father since she was just 3 years old. Accused-appellant's moral influence over the child cannot be denied.

It bears to add that although the Information in Criminal Case No. 11-288374 made no particular mention of Section 5 (b), Article III of R.A. No. 7610, this omission is not fatal to accused-appellant's right to be informed of the nature and cause of the accusation against him. Indeed, the actual facts recited in the information as constituting the offense charged prevails over its caption or designation.[39] In *Quimvel v. People*,[40] the Court was confronted with a similarly recited information, *viz.*:

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[33] *People v. Ardon*, 407 Phil. 104, 121 (2001).

[34] Id.

[35] *People v. Rellota*, 640 Phil. 471, 496 (2010).

[36] Id.

[37] Records, p. 14.

[38] *People v. Corpuz*, 597 Phil. 459, 467 (2009).

[39] *Espino v. People*, 713 Phil. 377 (2013), citing *People v. Manalili*, 355 Phil. 652, 688 (1998).

[40] Supra note 28, at 916.

AMENDED INFORMATION

The Undersigned Assistant City Prosecutor of Ligao City hereby accuses EDUARDO QUIMVEL y BRAGA also known as EDWARD/ EDUARDO QUIMUEL y BRAGA of the crime of Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, committed as follows:

> That on or about 8 o'clock in the evening of July 18, 2007 at Palapas, Ligao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, did then and there, willfully, unlawfully and feloniously, insert his hand inside the panty of [AAA], a minor of 7 years old and mash her vagina, against her will and consent, to her damage and prejudice.
>
> ACTS CONTRARY TO LAW.

In holding that the allegations make out a case for sexual abuse under Section 5 (b), Article III of R.A. No. 7610, the Court declared:

> To the mind of the Court, the allegations are sufficient to classify the victim as one "exploited in prostitution or subject to other sexual abuse." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.
>
> Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children.[41] (Underscoring supplied)

Clearly, the facts recited in the subject Information made out a charge for violation of Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. No. 7610. As discussed

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[41] Id. at 916-917.

earlier, the prosecution established that accused-appellant, who exercised moral ascendancy over the child AAA, engaged her in lascivious conduct within the purview of sexual abuse under Section 5 (b). Thus, the CA correctly convicted accused-appellant of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. No. 7610.

Criminal Case No. 11-288377
Qualified Rape

Article 266-A of the RPC, as amended by R.A. No. 8353, defines statutory rape, and Article 266-B thereof imposes the death penalty if, among others, the victim is under 18 years of age and the offender is a relative by affinity within the third civil degree, to wit:

> 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**.
>
> x x x x x x x x x
>
> Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x 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 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**. (Emphases supplied)

Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age or demented. Proof of force, threat, intimidation, or consent is unnecessary, since none of these is an element of statutory rape, where the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[42]

In this case, both elements attend.

First, AAA vividly recalled her harrowing ordeal in the hands of accused-appellant in August 2010. Her testimony was straightforward and spontaneous, as she intimated to the RTC how accused-appellant removed her shorts and underwear while she was sleeping, and forcibly inserted his penis into her vagina. Second, as disclosed by her birth certificate, AAA was 11 years old when accused-appellant ravished her. Such fact supplants the element of force, threat or intimidation, as the same is not essential for rape against a victim under 12 years old. Also, the qualifying circumstance of relationship was, likewise, satisfactorily proved by BBB who declared that accused-appellant was her common-law spouse, which was admitted by accused-appellant himself. As discussed earlier, accused-appellant's moral ascendancy attends, as the child victim had known and identified accused-appellant as her father since she was just 3 years old.

Thus, the RTC correctly convicted accused-appellant of Qualified Rape under Article 266-A (1) (d), in relation to Article 266-B (1) of the RPC.

Criminal Case No. 11-288375
Attempted Qualified Rape

In Criminal Case No. 11-288375, the Information charged accused-appellant in this wise: accused-appellant removed the

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[42] *People v. Brioso*, 788 Phil. 292, 306 (2016).

shorts and panty of AAA, and forcibly tried to insert his penis into her vagina "with the evident intent of having carnal knowledge with [AAA], all against her will and consent, but [accused-appellant] did not perform all the acts of execution which should have produced the crime of Rape by reason of some cause or accident other than his own spontaneous desistance, that is, by the act of said [AAA], of kicking [accused-appellant] causing him to return to the original place where he was then sleeping."[43]

To prove the allegations, AAA testified, thus:

Q On June 27, 2009, this is an Attempted Rape, do you still remember what happened that time?
A Yes, sir.

Q You were just 9 years old at that time, correct?
A Yes, Sir.

Q x x x [C]an you tell me what happened that time, if you can still remember?
A **He forcibly removed my underwear and he tr[ied] to insert his penis, Sir**.

Q Since you mentioned [that] he forcibly removed your underwear and your short[s], how did he do that to you?
A He just pulled it down, Sir.

x x x x x x x x x

Q You said he forcibly removed your underwear and your short[s], did he successfully do that?
A Yes, Sir.

Q **And you said a while ago that he place[d] himself on top of you and tr[ied] to forcibly insert his penis into your vagina, how did he do that to you?**
A **He was on top of me, Sir**.

Q **How did he forcibly [insert] his penis into your vagina?**
A **He mounted me and tried inserting his penis inside my vagina, Sir**.

[43] Records, p. 3.

Q **How did he hold you, since you said he mounted you at that time?**
A **He h[e]ld my hands and feet, Sir**.

Q If you can still remember[,] what particular [hand] did he [use] in holding your hands.
A Right hand, Sir.

Q How about your feet[,] what [hand] did he [use]?
A He also used his feet, Sir.

Q **How about his other hand[,] what did he do?**
A **Holding his penis, Sir**.

Q Did he utter any word while he was on top of you and trying to insert his penis into your vagina?
A None, Sir.

Q How about you[,] how did you react?
A None, Sir.

Q **Just by kicking and trying to push him in order to contain him?**
A **Yes, Sir.**[44] (Emphases supplied)

As correctly held by the RTC and the CA, the foregoing testimony established attempted rape only.

According to Article 6 of the RPC, "there is an attempt when the offender commenced the commission of the crime directly by overt acts, but does not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance." The character of the overt acts has been explained by the Court in *People v. Lizada*,[45] thus:

An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen

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[44] TSN, June 3, 2016, pp. 11-15.

[45] 444 Phil. 67, 98-99 (2003).

into a concrete offense. The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is. It is necessary that the overt act should have been the ultimate step towards the consummation of the design. **It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made."** The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, **the overt acts must have an immediate and necessary relation to the offense**. (Emphases supplied)

Applying the foregoing to rape cases, the Court, in *People v. Bonaagua*,[46] declared that the slightest penetration by the male organ or even its slightest contact with the outer lip or the *labia majora* of the vagina already consummates the crime of rape. In *People v. Arce, Jr.*,[47] the Court found the accused guilty of attempted rape only, owing to the failure of the victim to declare a slightest penetration into her vagina, which was necessary to consummate rape. On the contrary, the victim categorically stated that the accused was not able to insert his penis into her private part because she was moving her hips away. In *People v. Tolentino*,[48] the Court, in the same manner, convicted the accused of attempted rape only, underscoring the paucity of evidence that the slightest penetration ever took place, *i.e.*, that the victim's statements that the accused was "trying to force his sex organ into mine" and "*binundol-bundol ang kanyang ari*" did not prove that the accused's penis reached the *labia* of the *pudendum* of the victim's vagina.

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[46] 665 Phil. 728 (2011).

[47] 417 Phil. 18 (2001).

[48] 367 Phil. 755 (1999).

In this case, AAA declared that accused-appellant forcibly "tried inserting his penis [into her] vagina." There was no categorical declaration that accused-appellant's penis actually penetrated, however slightly, much less touched, her vagina. As AAA confirmed in her testimony, she resisted accused-appellant's advances by pushing and kicking him "in order to contain him." The Court has consistently emphasized that "[i]n rape cases, the prosecution bears the primary duty to present its case with clarity and persuasion, to the end that conviction becomes the only logical and inevitable conclusion."[49] As a conviction cannot be made to rest on possibilities, both the RTC and the CA correctly observed that AAA's testimony failed to prove all the elements of a consummated rape.

While accused-appellant was unsuccessful in penetrating AAA due to her resistance, in attempting to do so, he nevertheless possessed the intent to penetrate her, as manifested by the following overt acts: forcibly removing AAA's shorts and underwear, lying on top of her, mounting and restraining her hands and feet, and holding his penis with his left hand trying to insert it into her vagina. The totality of these acts clearly demonstrated accused-appellant's unmistakable objective to insert his penis into AAA's vagina, making him liable for the crime of rape in its attempted stage. Considering the concurrence of the aggravating circumstances of minority and relationship, as discussed earlier, accused-appellant's conviction for Attempted Qualified Rape is in place.

Criminal Case No. 11-288378
Conviction of Rape by Sexual Assault under Article 266-A(2), in relation to Article 266-B(1) of the RPC

Accused-appellant was indicted under the Information which alleged: "[accused-appellant], being then the stepfather of [AAA], a minor, 9 years old, and/or common[-]law husband of [BBB], mother of said [AAA], did then and there willfully, unlawfully

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[49] *People v. Poras*, 626 Phil. 526, 546 (2010).

and feloniously commit sexual assault upon said [AAA], by then and there making her hold his penis and putting it inside her mouth, against her will and consent, to her damage and prejudice."[50] In convicting accused-appellant of "Qualified Rape by Sexual Assault under Article 266-A (2), in relation to Article 266-B (1) of the RPC," the CA gave premium to the following declarations of AAA, thus:

Q In this incident can you tell me what happened on June 28, 2009?
A At that time the accused was beside me an[d] then he remove[d] his short[s] and brief and **he force[d] me to hold his penis and he insert[ed] it inside my mouth**, Sir.

x x x x x x x x x

Q **Did he successfully put his penis into your mouth?**
A **No, I was able to push him at that time, Sir**.

Q **But did his penis touch to [sic] your mouth?**
A **Yes, Sir**.

Q **Was it slightly inserted to your mouth?**
A **No, Sir**.

Q **Just touched your lips?**
A **Yes, Sir**.[51] (Emphases supplied)

Again, taking into consideration that AAA was a child under 12 years at the time of the incident, there is a need to determine the proper nomenclature of the offense charged.

Sexual assault, as differentiated from rape through "carnal knowledge" or rape through "sexual intercourse," was introduced by R.A. No. 8353 or the Anti-Rape Law of 1997, amending Article 335, the provision on rape in the RPC.[52] Incorporated into the RPC by R.A. No. 8353, Article 266-A reads:

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[50] Records, p. 6.

[51] TSN, June 3, 2016, pp. 26-27.

[52] *People v. Pareja*, 724 Phil. 759, 781 (2014).

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. (Underscoring supplied)

In *People v. Tulagan*,[53] the Court reconciled the provisions on Sexual Assault, as well as Acts of Lasciviousness and Rape, under the RPC, as amended by R.A. No. 8353, *vis-à-vis* Sexual Intercourse and Lascivious Conduct under Section 5 (b), Article III of R.A. No. 7610, to clarify the nomenclature and the imposable penalties of said crimes, and damages to conform with existing jurisprudence. Citing *Dimakuta v. People*,[54] the Court instructed:

Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. However, in instances where the lascivious conduct is covered by the definition under R.A.

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

[54] 771 Phil. 641, 670-671 (2015).

No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610.

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements. (Underscoring supplied)

Taking the *Dimakuta* ruling in line with the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, the guiding parameter holds 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[.]"[55] This rule applies in this case, considering that the introduction of any object into the mouth of a child is covered under the definition of lascivious conduct under R.A. No. 7610.[56]

Now, going back to the testimony of AAA, there is a need to characterize the proper offense committed following her categorical declaration that accused-appellant's penis was not successfully inserted into her mouth. Relevant to this issue is an analogous application of rape through carnal knowledge in its attempted stage. Carnal knowledge is defined as "the act of a man in having sexual bodily connections with a woman";[57] as such, it requires the slightest penetration of the female genitalia to consummate the rape.[58] In *People v. Campuhan*,[59] the Court delineated what constitutes "touching" by the penis in rape, *viz.*:

> **[T]ouching when applied to rape cases does not simply mean** mere epidermal contact, stroking or grazing of organs, **a slight brush or a scrape of the penis on the external layer of the victim's vagina**, or the *mons pubis*, as in this case. There must be sufficient and convincing proof that **the penis indeed touched the *labias* or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape**. As the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the [*labia majora*] or the *labia minora* of the *pudendum* constitutes consummated rape.
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> The *pudendum* or *vulva* is the collective term for the female genital organs that are visible in the perineal area, e.g., *mons pubis*, *labia*

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[55] *People v. Tulagan*, supra note 53.

[56] Implementing Rules and Regulations of R.A. No. 7610, supra note 29.

[57] *People v. Orita*, 262 Phil. 963, 975 (1990), citing Black's Law Dictionary, Fifth Edition, p. 193.

[58] *People v. Cruz*, 745 Phil. 54, 68 (2014).

[59] 385 Phil. 912 (2000).

majora, *labia minora*, the hymen, the clitoris, the vaginal orifice, etc. The *mons pubis* is the rounded eminence that becomes hairy after puberty, and is instantly visible within the surface. The next layer is the *labia majora* or the outer lips of the female organ composed of the outer convex surface and the inner surface. The skin of the outer convex surface is covered with hair follicles and is pigmented, while the inner surface is a thin skin which does not have any hair but has many sebaceous glands. Directly beneath the *labia majora* is the *labia minora*. Jurisprudence dictates that the *labia majora* must be entered for rape to be consummated, and **not merely for the penis to stroke the surface of the female organ**. Thus, a **grazing of the surface of the female organ or touching the *mons pubis* of the *pudendum* is not sufficient to constitute consummated rape. Absent any showing of the slightest penetration of the female organ, *i.e.*, touching of either *labia* of the *pudendum* by the penis, there can be no consummated rape; at most, it can only be attempted rape, if not acts of lasciviousness**.[60] (Emphases and underscoring supplied)

To the mind of the Court, the foregoing analysis applies by analogy in cases of rape by sexual assault, *i.e.*, by inserting the accused's penis into another person's mouth. In this case, AAA testified that accused-appellant's penis was not actually inserted into her mouth, however slightly, when she categorically declared that accused-appellant's penis merely touched her lips by reason of her resistance when she pushed him away. From her testimony, it cannot be ascertained whether the said touching had sufficient force so as to, at least, make the lips part and permit a slight opening, through which the tip of accused-appellant's penis, or any part thereof, may have probable entry. As accused-appellant's conviction cannot be made to rest on such possibility, accused-appellant cannot be held liable for sexual assault in its consummated stage.

While accused-appellant failed to consummate the offense of sexual assault, the totality of his acts in trying to achieve his bestial purpose, *i.e.*, removing his shorts and brief, and forcing AAA to hold his penis and insert/put it inside her mouth, likewise established the elements of Acts of

[60] Id. at 920-922.

Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. No. 7610.

Applying the variance doctrine under Section 4 in relation to Section 5, Rule 120 of the Revised Rules on Criminal Procedure,[61] accused-appellant can be convicted of Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b) of R.A. No. 7610, which was the offense proved though he was charged with rape through sexual assault in relation to R.A. No. 7610.

The essential elements of sexual abuse under Section 5 (b), Article III of R.A. No. 7610 are as follows:

(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.[62]

On the other hand, the elements of Acts of Lasciviousness under Article 336 of the RPC are as follows:

(1) That the offender commits any act of lasciviousness or lewdness;

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[61] REVISED RULES ON CRIMINAL PROCEDURE, Rule 120, Sections 4 and 5.

Sec. 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charge in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Sec. 5. *When an offense includes or is included in another*. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[62] *Quimvel v. People,* supra note 28, at 915.

(2) That it is done 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;

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; and

(3) That the offended party is another person of either sex.[63]

In this case, the elements of Acts of Lasciviousness under Article 336 of the RPC and sexual abuse under Section 5 (b), Article III of R.A. No. 7610 were sufficiently established. As discussed earlier, the introduction of any object into the mouth of a child under 12 years partakes of a lascivious conduct under R.A. No. 7610,[64] more so in this case when taken in light of accused-appellant's preparatory acts of removing his pants and underwear, taking out his penis, and forcing the child to hold it.

Based, thus, on evidence, accused-appellant is criminally liable for Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. No. 7610.

Credibility of the child witness AAA

Accused-appellant attempts to discredit AAA's testimony by insisting that it would have been impossible for him to have raped and sexually abused AAA while in the same room as BBB and his two other children. He claims that AAA could have easily shouted or called their attention, as she had the opportunity to do so. Further, accused-appellant faults AAA in choosing to stay in their house after the three incidents on June 15, 2009, June 27, 2009 and June 28, 2009. To accused-appellant, AAA's act of allowing a span of one year, seven

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[63] Id. at 914.

[64] Implementing Rules and Regulations of R.A. No. 7610, supra note 29.

months and six days to lapse from the first incident up to the last one, before reporting the same does not inspire belief. He argued that no woman who was already abused thrice would allow herself to stay and sleep in the same house as her supposed violator.[65]

Accused-appellant's arguments fail to persuade.

Conviction in rape cases usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[66] Hence, the victim's credibility becomes the paramount consideration in the resolution of rape cases.[67]

Contrary to accused-appellant's proposition, the RTC could not be faulted for giving credence to the testimony of AAA, for the assessment of her credibility is a duty well-within its province and expertise. It is a time-honored rule that the assessment of the trial court with regard to the credibility of witnesses deserves the utmost respect, if not finality, for the reason that the trial judge has the prerogative, denied to appellate judges, of observing the demeanor of the declarants in the course of their testimonies.[68] Indeed, the factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions based on its findings are generally binding and conclusive upon the Court, especially so when affirmed by the appellate court.[69] With more reason shall this principle apply in testimonies given by a child. In a long line of cases,[70] the

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[65] CA *rollo*, pp. 40-43.

[66] *People v. Palanay*, 805 Phil. 116, 126 (2017).

[67] *People v. Ocdol*, 741 Phil. 701, 714 (2014).

[68] *People v. Chua*, 444 Phil. 757, 766-767 (2003).

[69] *People v. Iroy*, 628 Phil. 145, 152 (2010).

[70] *Ricalde v. People*, 751 Phil. 793, 805 (2015), citing *Pielago v. People*, 706 Phil. 460, 468 (2013); *Campos v. People*, 569 Phil. 658, 671 (2008), citing *People v. Capareda*, 473 Phil. 301, 330 (2004); and *People v. Galigao*, 443 Phil. 246, 260 (2003).

Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity. This principle is further embodied in the *Rule on Examination of Child Witness*, thus:

> Sec. 22. *Corroboration*. Corroboration shall not be required of a testimony of a child. His testimony, if credible by itself, shall be sufficient to support a finding of fact, conclusion, or judgment subject to the standard of proof required in criminal and non-criminal cases.

Indeed, AAA's behavior during and immediately after each incident cannot be taken against her. The fact that AAA failed to shout or otherwise make a provocative reaction to accused-appellant's sexual advances, as well as her act of staying in their house after the first and succeeding incidents, is totally understandable. It must be emphasized that the child victim was 9 and 11 years old, respectively, when accused-appellant sexually violated her. Truly, such a tender age cannot demand from the child the kind of reaction suggested by accused-appellant. In *People v. Gecomo*,[71] the Court explained:

> People react differently under emotional stress, as we have repeatedly ruled. There is no standard form of behavior when one is confronted by a shocking incident especially if the assailant is physically near. The workings of the human mind when placed under emotional stress are unpredictable. **In a given situation, some may shout, some may faint, some may be shocked into insensibility, while others may even welcome the intrusion.** Apropos to the cases at bar, we have ruled that the failure of a complainant to run away at the first opportunity she had cannot be construed as a showing of consent to the sexual intercourse, contrary to the theory espoused by appellant. (Emphasis supplied)

Neither did the presence of BBB and their two other children in the same room where the incidents took place discount rape or sexual abuse. The Court has consistently held that rape can be committed "even in places where people congregate, in parks, along the roadside, within school premises and even inside a

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[71] 324 Phil. 297, 313-314 (1996).

house where there are other occupants,"[72] or "where other members of the family are also sleeping."[73] Indeed, "lust is no respecter of time or place."[74]

Lastly, the lack of any specific injuries indicated in AAA's medical certificate does not negate her claims. As correctly ruled by the RTC and the CA, such medical report is not material for the purpose of proving the commission of rape or sexual abuse as the same is merely corroborative in character.[75]

Faced, thus, with accused-appellant's bare denial, the Court is one with the RTC and the CA in giving full weight and credit to AAA's straightforward narration of facts on how accused-appellant raped and sexually abused her.

Penalty and Award of Damages

Criminal Case Nos. 11-288374 and 11-288378.

The imposable penalty for Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. No. 7610, when the victim is under 12 years of age is *reclusion temporal* in its medium period which has a range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.

Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree, *i.e.*, *reclusion temporal* in its minimum period or from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, the maximum of the indeterminate penalty shall be taken from the proper penalty that could be imposed under the RPC for acts of lasciviousness which, there being no aggravating or

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[72] *People v. Ulili*, 296-A Phil. 623, 632-633 (1993); *People v. Codilla*, 295 Phil. 990, 1011 (1993).

[73] *People v. Cura*, 310 Phil. 237, 247 (1995).

[74] *People v. Segundo*, 298-A Phil. 698, 703 (1993).

[75] *People v. Prodenciado*, 749 Phil. 746, 765 (2014).

mitigating circumstance in this case, is the medium period of *reclusion temporal* medium which ranges from fifteen (15) years, six (6) months and twenty (20) days to sixteen (16) years, five (5) months and nine (9) days.[76] The CA was correct in not appreciating the element of relationship, (*i.e.*, accused-appellant being the common-law husband of BBB), as a common-law relationship is not included under Section 3, Article XII of R.A. No. 7610 as a separate aggravating circumstance for purposes of increasing the penalty in its maximum period.[77]

As to accused-appellant's civil liabilities, the amount of civil indemnity, moral damages and exemplary damages awarded by the CA shall each be increased to ₱50,000.00 for each count in accordance with *People v. Tulagan*.[78] Further, a fine in the amount ₱15,000.00 under Section 5 (b), Article III of R.A. No. 7610 shall be imposed upon accused-appellant in each case.

Criminal Case No. 11-288377.

The imposable penalty for Qualified Rape under Article 266-A (1) (d), in relation to Article 266-B (1) of the RPC, is death. The CA properly sustained the RTC in imposing the penalty of *reclusion perpetua* without eligibility for parole, in *lieu* of death, in accordance with A.M. No. 15-08-02-SC[79]

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[76] *People v. Bejim*, 824 Phil. 10, 33-34 (2018).

[77] REPUBLIC ACT NO. 7610, Art. XII, Sec. 31, provides:

Sec. 31. Common Penal Provisions. —

x x x x x x x x x

(c) The **penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity**, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked[.] (Emphasis and underscoring supplied)

[78] Supra note 53.

[79] 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*":

x x x x x x x x x

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. No. 9346,

and R.A. No. 9346.[80] As to accused-appellant's civil liabilities, the CA correctly increased the civil indemnity, moral damages and exemplary damages to ₱100,000.00 each, in conformity with the guidelines set in *People v. Jugueta*.[81]

Criminal Case No. 11-288375.

For the crime of **Attempted Qualified Rape under Article 266-A (1) (d), in relation to Article 266-B (1) of the RPC**, the penalty shall be *prision mayor*, since Article 51 of the RPC states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principal in an attempt to commit a felony.[82] Applying the Indeterminate Sentence Law, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years. In this case, the CA correctly imposed the penalty of imprisonment of six (6) years of *prision correccional*, as minimum to ten (10) years of *prision mayor*, as maximum.

As regards accused-appellant's civil liabilities, the award of civil indemnity, moral damages and exemplary damages shall be pegged at ₱50,000.00 each to conform with the guidelines in *People v. Jugueta*.[83]

In addition, an interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid.[84]

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the qualification of "*without eligibility for parole*" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[80] An Act Prohibiting the Imposition of Death Penalty in the Philippines (2006).

[81] 783 Phil. 806 (2016).

[82] *People v. Adallom*, 683 Phil. 618, 645-646 (2012).

[83] Supra note 81.

[84] *People v. Buclao*, 736 Phil. 325, 341 (2014).

WHEREFORE, the appealed Decision dated April 26, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08616 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Christian Manuel *y* Villa is found **GUILTY** of:

1. **Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5 of Republic Act No. 7610** in Criminal Case Nos. 11-288374 and 11-288378, and sentenced in each case to an indeterminate prison term of thirteen (13) years, nine (9) months and ten (10) days of *reclusion temporal* minimum, as minimum, to sixteen (16) years, five (5) months and nine (9) days of *reclusion temporal* medium, as maximum. In addition, accused-appellant is **ORDERED** to pay the victim the amount of ₱50,000.00 each as civil indemnity, moral damages and exemplary damages, and ₱15,000.00 as fine, for each count of Acts of Lasciviousness.

2. **Qualified Rape under Article 266-A (1) (d), in relation to Article 266-B (1) of the Revised Penal Code** in Criminal Case No. 11-288377 and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and **ORDERED** to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱100,000.00 each.

3. **Attempted Qualified Rape under Article 266-A (1) (d), in relation to Article 266-B (1) of the Revised Penal Code** in Criminal Case No. 11-288375 and sentenced to an indeterminate prison term of six (6) years of *prision correccional*, as minimum to ten (10) years of *prision mayor*, as maximum. In addition, accused-appellant is **ORDERED** to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱50,000.00 each.

Accused-appellant is **ORDERED** to pay AAA interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

Leonen (*Chairperson*), *Hernando, Inting,* and *Rosario, JJ.*, concur.

EN BANC

[G.R. No. 243607. December 9, 2020]

PHILIPPINE CHARITY SWEEPSTAKES OFFICE, ALL CONCERNED OFFICERS AND EMPLOYEES AS REPRESENTED BY MS. BETSY B. PARUGINONG, OFFICER-IN-CHARGE MANAGER, SOUTHERN TAGALOG AND BICOL REGION, *Petitioners, v.* **COMMISSION ON AUDIT,** *Respondent.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARANDANG, *J.*:

This Petition for *Certiorari*[1] under Rule 64 in relation to Rule 65 of the Rules of Court seeks to annul and set aside the Decision[2] dated November 23, 2017 and the Resolution dated August 16, 2018 of the Commission on Audit (COA), which affirmed the 32 Notice of Disallowances (NDs) on the various allowances and benefits received by the officials and employees of the Philippine Charity Sweepstakes Office-Laguna Provincial District Office (PCSO-LPDO), for calendar years 2009 to 2011 in the total amount of ₱5,977,610.97:[3]

	Notice of Disallowance (ND)	Benefit	Period Covered	Amount (Php)
1	PCSO2011-11-101 (2009)	2009 CNA Incentive	2009	225,000.00

[1] Petition for *Certiorari* with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction; *rollo*, pp. 3-17.

[2] *Id.* at 24-37.

[3] *Id.* at 4-5.

2	PCSO2011-12-101 (2009/2010)	Longevity Pay, Loyalty Award and Refund	October 2009 to October 2010	43,673.34
3	PCSO2011-13-101 (2009/2010)	Longevity Pay and Loyalty Award	November 2010	11,349.76
4	PCSO2011-14-101 (2010)	Productivity Enhancement Incentive (PEI)	2010	112,500.00
5	PCSO2011-15-101 (2011)	Financial Assistance for the Holy Week	2011	225,000.00
6	PCSO2011-16-101 (2011)	Weekly Draw Allowance	March to April 2011	40,200.00
7	PCSO2011-17-101 (2011)	Quarterly Rice Allowance	2nd Quarter 2011	108,000.00
8	PCSO2011-18-101 (2011)	Rice Allowance to Casual Employees	April 2011	9,000.00
9	PCSO2011-19-101 (2011)	Financial Assistance in lieu of Educational Assistance to Mr. Michael Salteras, CA-PCSO, Laguna PDO	2011	20,250.00
10	PCSO2011-20-101 (2011)	Educational Assistance		1,213,518.70
11	PCSO2011-21-101 (2011)	CNA Incentive or Signing Bonus (balance)		345,000.00
12	PCSO2011-22-101 (2011)	Rice Allowance to Casual Employees	May 2011	9,000.00
13	PCSO2011-23-101 (2011)	Monthly Representation and Transportation Allowance (RATA) of Chief Lottery Operations Offices (CLOO) -Laguna PDO	April to May 2011	4,000.00
14	PCSO2011-24-101 (2011)	Weekly Draw Allowances		93,800.00
15	PCSO2011-25-101 (2011)	Staple Food, Hazard Pay, Cost of Living Allowances (COLA) and Medicine Allowance	March to May 2011	201,000.00
16	PCSO2011-26-101 (2011)	Rice Allowance for Casual Employees	June 2011	9,000.00
17	PCSO2011-27-101 (2011)	Monthly RATA of CLOO, PCSO Laguna PDO		2,000.00
18	PCSO2011-28-101 (2011)	Weekly Draw Allowances	May to June 2011	40,200.00
19	PCSO2011-29-101 (2011)	COLA and Medicine Allowance	May 2011	52,500.00
20	PCSO2011-30-101 (2010)	Longevity Pay	December 2010	1,349.76
21	PCSO2011-31-101 (2011)	Longevity Pay and Personal Economic Relief Assistance (PERA)/Rice Allowance	January to March 2011	11,718.40
22	PCSO2011-32-101 (2011)	Weekly Draw Allowances	June to July 2010	40,200.00

23	PCSO2011-33-101 (2011)	RATA to CLOO-Laguna PDO	July 2011	2,000.00
24	PCSO2011-34-101 (2011)	Staple Food, Hazard Pay, COLA, Medicine Allowance and Longevity Pay	June 2011	98,915.84
25	PCSO2011-35-101 (2010)	Medical and Dental Expenses	January to September 2010	1,491,551.87
26	PCSO2011-36-101 (2010)	Rice Allowance	July 2011	45,000.00
27	PCSO2011-37-101 (2010)	Weekly Draw Allowances		53,600.00
28	PCSO2011-38-101 (2010)	Staple Food, Hazard Pay, COLA, Medicine Allowance and Longevity Pay		98,915.84
29	PCSO2011-39-101 (2010)	Medical, Dental and Optical Reimbursements	October to May 2011	868,675.36
30	PCSO2011-40-101 (2010)	Longevity Pay and PERA/Rice	March to May 2011	5,708.96
31	PCSO2011-41-101 (2010)	Longevity Pay	May 2011	1,415.84
32	PCSO2011-42-101 (2010)	Medical and Dental Expenses	June to August 2011	493,576.30
		TOTAL		**5,977,610.97**[4]

The persons held liable for the abovementioned NDs were as follows:

PCSO2011-11-101 (2009)	**2009 CNA Incentive**	**225,000.00**
Name	Position/Designation	Nature of Participation in the Transaction
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008 and approved PCSO Resolution No. 505, series of 2010
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008 and approved PCSO Resolution No. 505, series of 2010
Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Jose R. Taruc V	Then Director, PCSO Board of Directors	Approved PCSO Resolution No. 505, series of 2010
Raymundo T. Roquero	Then Director, PCSO Board of Directors	Approved PCSO Resolution No. 505, series of 2010

[4] *Id*. at 40-42.

Manuel T. Morato	Then Director, PCSO Board of Directors	Approved PCSO Resolution No. 505, series of 2010
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Department Manager, Southern Tagalog & Bicol Region	Approved the transaction
Lady Elaine R. Gatdula, et al.	Please refer to Annex A	Received payment[5]

PCSO2011-12-101 (2010)	**Longevity Pay, Loyalty Award and Refund — October 2009 to October 2010**	**43,673.34**
Name	Position/Designation	Nature of Participation in the Transaction
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved the transactions
Lady Elaine R. Gatdula, et al.	Refer to Annex A1 to A3	Received payment[6]

PCSO2011-13-101 (2010)	**Longevity Pay and Loyalty Award — November 2010**	**11,349.76**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved the November 1-15, 2010 transactions
Irma S. Guemo	Reg'l. Operations Mgr. Southern Tagalog Region	Approved the November 16-30, 2010 transactions in behalf of Mgr. Gabuyo
Lady Elaine R. Gatdula, et al.	Refer to Annex A1	Received payment[7]

[5] *Id.* at 143-144.

[6] *Id.* at 147-148.

[7] *Id.* at 154.

PCSO2011-14-101 (2010)	**Productivity Enhancement Incentive (PEI) - 2010**	**112,500.00**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Margarita Juico	Chairman, PCSO Board of Directors	Approved PCSO Resolution No. A-0163 dated December 15, 2010
Francisco Joaquin	PCSO Board of Director	Approved PCSO Resolution No. A-0163 dated December 15, 2010
Aleta S. Tolentino	PCSO Board of Director	Approved PCSO Resolution No. A-0163 dated December 15, 2010
Betty B. Nantes	PCSO Board of Director	Approved PCSO Resolution No. A-0163 dated December 15, 2010
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Department Manager, Southern Tagalog & Bicol Region	Approved the transaction
Lady Elaine R. Gatdula, et al.	Refer to Annex 1	Received payment[8]

PCSO2011-15-101 (2010)	**Financial Assistance for the Holy Week - 2011**	**225,000.00**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Margarita Juico	Chairman, PCSO Board of Directors	Approved PCSO Resolution No. 117, series of 2011
Francisco Joaquin III	PCSO Board of Director	Approved PCSO Resolution No. 117, series of 2011
Aleta S. Tolentino	PCSO Board of Director	Approved PCSO Resolution No. 117, series of 2011
Betty B. Nantes	PCSO Board of Director	Approved PCSO Resolution No. 117, series of 2011
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Department Manager, Southern Tagalog & Bicol Region	Approved the transaction
Lady Elaine R. Gatdula, et al.	Refer to Annex A	Received payment[9]

[8] *Id*. at 195.

[9] *Id*. at 198-199.

PCSO2011-16-101 (2011)	**Weekly Draw Allowance - March to April 2011**	**40,200.00**
PCSO2011-17-101 (2011)	**Quarterly Rice Allowance - 2nd Quarter 2011**	**108,000.00**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Irma S. Guemo	OIC-Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Refer to Annex A	Received payment[10]

PCSO2011-18-101 (2011)	**Rice Allowance to Casual Employees - April 2011**	**9,000**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Remeliza M. Gabuyo	OIC-Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions
Lady Elaine R. Gatdula, et al.	Please refer to Annex A	Received payment[11]

[10] *Id.* at 201-202.

[11] *Id.* at 206-207.

PCSO2011-19-101 (2010)	**Financial Assistance In lieu of Educational Assistance to Mr. Michael Salteras, CA-PCSO, Laguna PDO - 2011**	**20,250**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Margarita Juico	Chairman, PCSO Board of Directors	Approved PCSO Resolution No. 0098, series of 2011
Mabel V. Mamba	PCSO Board of Director	Approved PCSO Resolution No. 0098, series of 2011
Francisco Joaquin III	PCSO Board of Director	Approved PCSO Resolution No. 0098, series of 2011
Aleta L. Tolentino	PCSO Board of Director	Approved PCSO Resolution No. 0098, series of 2011
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Remeliza M. Gabuyo	Department Manager, Southern Tagalog & Bicol Region	Approved the transaction
Lady Elaine R. Gatdula, et al.	Refer to Annex 1	Received payment[12]

PCSO2011-20-101 (2011)	**Educational Assistance - 2011**	**1,213,518.70**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008 and approved PCSO Resolution No. 306, series of 2009
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008 and approved PCSO Resolution No. 306, series of 2009
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Jose R. Taruc V Raymundo T. Roquero Ma. Fatima A.S. Valdez Manuel L. Morato	Then PCSO Board of Director	Approved PCSO Resolution No. 306, series of 2009
Raymundo T. Roquero	Then PCSO Board of Director	Approved PCSO Resolution No. 306, series of 2009
Ma. Fatima A.S. Valdez	Then PCSO Board of Director	Approved PCSO Resolution No. 306, series of 2009
Manuel L. Morato	Then PCSO Board of Director	Approved PCSO Resolution No. 306, series of 2009

[12] *Id.* at 236-237.

Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Department Manager, Southern Tagalog Region	Approved the transactions
Lady Elaine R. Gatdula, et al.	Please refer to Annex A	Received payment[13]

PCSO2011-21-101 (2010)	**CNA Incentive or Signing Bonus (balance) - 2011**	**345,000.00**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Margarita Juico	Chairman, PCSO Board of Directors	Approved PCSO Board Resolution No. 163, series of 2011
Francisco Joaquin III	PCSO Board of Director	Approved PCSO Board Resolution No. 163, series of 2011
Aleta L. Tolentino	PCSO Board of Director	Approved PCSO Board Resolution No. 163, series of 2011
Betty B. Nantes	PCSO Board of Director	Approved PCSO Board Resolution No. 163, series of 2011
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Remeliza M. Gabuyo	Department Manager, Southern Tagalog & Bicol Region	Approved the transaction
Lady Elaine R. Gatdula, et al.	Please refer to Annex A	Received payment[14]

PCSO2011-22-101 (2011)	**Rice Allowance to Casual Employees - May 2011**	**9,000**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008

[13] *Id.* at 245-246.

[14] *Id.* at 248-249.

Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Irma S. Guemo	OIC-Regional Operations Manager Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Bernarditta V. Luistro, et al.	Please refer to Annex A	Received payment[15]

PCSO2011-23-101 (2010)	**Monthly Representation and Transportation Allowance (RATA) of Chief Lottery Operations Offices (CLOO) - Laguna PDO April to May 2011**	**4,000**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim and receive payment
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved the transactions[16]

PCSO2011-24-101 (2011)	**Weekly Draw Allowances — April to May 2011**	**93,800**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim

[15] *Id.* at 251-252.

[16] *Id.* at 254.

Irma S. Guemo	OIC-Regional Operations Manager Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Please refer to Annex B	Received payment[17]

PCSO2011-25-101 (2011)	**Staple Food, Hazard Pay, Cost of Living Allowances (COLA) and Medicine Allowance March to May 2011**	**201,000**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved DV Nos. 11-03-0300 and 11-05-0514
Irma S. Guemo	OIC-Regional Operations ManagerSouthern Tagalog Region	Approved DV Nos. 11-04-0376 and 11-04-0464
Lady Elaine R. Gatdula, et al.	Please refer to Annex B	Received payment[18]

PCSO2011-26-101 (2011)	**Rice Allowance for Casual Employees - June 2011**	**9,000**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents

[17] *Id.* at 257.

[18] *Id.* at 261-262.

Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved DV Nos. 11-03-0300 and 11-05-0514
Irma Guemo	Reg'l. Operations Manager-Southern Tagalog Region	Approved DV Nos. 11-04-0376 and 11-04-464
Bernarditta V. Luistro, et al.	Please refer to Annex B	Received payment[19]

PCSO2011-27-101 (2010)	**Monthly RATA of CLOO, PCSO Laguna PDO - June 2011**	**2,000**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim and received payment
Irma S. Guemo	OIC – Regional Operations ManagerSouthern Tagalog Region	Approved the transaction on behalf of Mgr. Gabuyo[20]

PCSO2011-28-101 (2011)	**Weekly Draw Allowances - May to June 2011**	**40,200**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Irma S. Guemo	OIC – Regional Operations ManagerSouthern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Please refer to Annex B	Received payment[21]

[19] *Id.* at 291-292.

[20] *Id.* at 303.

[21] *Id.* at 305.

PCSO2011-29-101 (2011)	**COLA and Medicine Allowance - May 2011**	**52,500**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim
Irma S. Guemo	OIC – Regional Operations Manager Southern Tagalog Region	Approved the transaction on behalf of Mgr. Gabuyo
Lady Elaine R. Gatdula, et al.	Please refer to Annex A	Received payment[22]

PCSO2011-30-101 (2010)	**Longevity Pay December 2010**	**1,349.76**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved the transactions
Lady Elaine R. Gatdula, et al.	Please refer to Annex A1	Received payment[23]

PCSO2011-31-101 (2011)	**Longevity Pay and Personal Economic Relief Assistance (PERA)/Rice Allowance - January to March 2011**	**11,718.40**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims

[22] *Id.* at 309-310.

[23] *Id.* at 535.

Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved DV No. 11-01-0076
Irma S. Guemo	Reg'l. Operations Mgr., Southern Tagalog Region	Approved DV Nos. 11-01-0124, 0193, 11-02-0203 and 11-03-0264
Lady Elaine R. Gatdula, et al.	Please refer to Annex A1	Received payment[24]

PCSO2011-32-101 (2011)	**Weekly Draw Allowances - June to July 2010**	**40,200**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Irma S. Guemo	OIC Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Refer to Annex B	Received payment[25]

PCSO2011-33-101 (2011)	**RATA to CLOO – Laguna PDO - July 2011**	**2,000**
Name	Position/Designation	Nature of Participation in the Transaction
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claim and received payment
Irma S. Guemo	Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo[26]

[24] *Id.* at 540.

[25] *Id.* at 544.

[26] *Id.* at 548.

PCSO2011-34-101 (2011)	**Staple Food, Hazard Pay, COLA, Medicine Allowance and Longevity Pay – June 2011**	**98,915.84**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Irma S. Guemo	OIC-Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Please refer to Annexes A & B	Received payment[27]

PCSO2011-35-101 (2011)	**Medical and Dental Expenses - January to September 2010**	**1,491,551.87**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union (SEU)	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Dept. Manager – Southern Tagalog and Bicol Region	Approved the transactions
Lady Elaine R. Gatdula, et al.	Please refer to Annex A	Benefited from the incurrence of subject medical and dental expenses[28]

[27] *Id*. at 550-551.

[28] *Id*. at 504-555.

PCSO2011-36-101 (2011)	**Rice Allowance - July 2011**	**45,000**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Irma S. Guemo	OIC-Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Please refer to Annex B	Received payment[29]

PCSO2011-37-101 (2011)	**Weekly Draw Allowances - July 2011**	**53,600**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Irma S. Guemo	OIC-Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Refer to Annex 1	Received payment

[29] *Id.* at 406-407.

PCSO2011-38-101 (2011)	**Staple Food, Hazard Pay, COLA, Medicine Allowance and Longevity Pay – July 2011**	**98,915.84**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Irma S. Guemo	OIC-Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Refer to Annex 1	Received payment

PCSO2011-39-101 (2011)	**Medical, Dental and Optical Reimbursements - October to May 2011**	**868,675.36**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved the transactions except for the DVs approved by the Reg'l. Optns. Manager for Bicol or Southern Tagalog Region
Leila D. Galang	Reg'l. Optns. Manager –Bicol Region	Approved the transactions under DV Nos. 10-10-1122 to 1126 and 1154
Irma S. Guemo	Reg'l. Operations Mgr. - Southern Tagalog Region	Approved the transactions under DV Nos. 11-05-0500 to 501 and 0519

Lady Elaine R. Gatdula, et al.	Refer to Annex 1	Benefitted from the incurrence of the subject medical, dental and/or optical expenses

PCSO2011-40-101 (2011)	**Longevity Pay and PERA/Rice – March to May 2011**	**5,708.96**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved the transactions under DV Nos. 11-03-0300 and 11-05-0514
Irma S. Guemo	Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions under DV Nos. 11-04-0376 and 11-04-0464
Lady Elaine R. Gatdula, et al.	Refer to Annex 1	Received payment

PCSO2011-41-101 (2011)	**Longevity Pay - May 2011**	**1,415.84**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents
Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Irma S. Guemo	Reg'l. Operations Mgr. Southern Tagalog Region	Approved the transactions on behalf of Mgr. Remeliza M. Gabuyo
Lady Elaine R. Gatdula, et al.	Refer to Annex 1	Received payment

PCSO2011-42-101 (2011)	**Medical and Dental Expenses - June to August 2011**	**493,576.30**
Name	**Position/Designation**	**Nature of Participation in the Transaction**
Sergio O. Valencia	Then Chairman, PCSO Board of Directors	Passed PCSO-SEU CNA dated March 4, 2008
Rosario C. Uriarte	Then Vice Chairman, PCSO Board of Directors/General Manager PCSO	Passed PCSO-SEU CNA dated March 4, 2008
Jose S. Magsumbol	Then President, Sweepstakes Employees Union	Passed PCSO-SEU CNA dated March 4, 2008
Bernarditta V. Luistro	Acting Accountant	Certified the propriety of the claims and the completeness of the supporting documents

Lady Elaine R. Gatdula	Chief Lottery Operations Officer	Certified the correctness of the claims
Remeliza M. Gabuyo	Dept. Manager, Southern Tagalog & Bicol Region	Approved the transactions
Annabelle L. Palisoc, et al.	Refer to Annex 1	Benefitted from the incurrence of the subject medical and dental expenses

To support its claim for reversal of the disallowance, petitioners raised the following arguments: (1) the Board of Directors (Board) of PCSO is authorized to fix the salaries of officials and employees; (2) the benefits have become part of the compensation package of the employees; (3) the release of the benefits is sourced from the 15% built-in restriction pursuant to PCSO's charter and is charged against the savings of PCSO; (4) the Office of the President (OP) recently granted a subsequent approval on the various benefits/ incentives previously given to the officials and employees of the PCSO; and (5) the officials and employees received the benefits in good faith, hence, they cannot be required to refund the same.

For its part, the COA argues that the Board of Directors of PCSO does not have an unbridled and plenary power to determine the salaries, benefits and allowances of its personnel because under Section 12[31] of Republic Act No. (R.A.) 6758,[32] the authority to determine additional allowances or benefits which are deemed integrated in the standardized salary rates and can be continuously given to employees of government agencies rests with the Department of Budget and Management (DBM).

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[30] Note from the Publisher: Copied verbatim from the official document. Missing Footnote Reference and Footnote Text.

[31] Section 12. Consolidation of Allowance and Compensation. — All allowances, except for representation and transportation allowances[;] clothing and laundry allowances[;] subsistence allowance of marine officers and crew on board government vessels and hospital personnel stationed abroad[;] and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

[32] Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes.

The COA also held that the 15% built in restriction is allocated for PCSO's operating expenses and capital expenditures. PCSO cannot have savings as these revert, by law and by operation of its charter, to the Charity Fund, and no part of which should be granted to its employees.

Contrary to petitioners' contention that the allowances and benefits have become part of the compensation package of employees, COA averred that there was no evidence to show that the subject benefits were part of PCSO's employees' compensation for a considerable length of time. Even so, no matter how long continued, it cannot give rise to any vested right if it is contrary to law.

With regard to the subsequent approval by the OP under the letter dated May 19, 2011 of Executive Secretary Paquito Ochoa, the COA said that the supposed approval did not refer to the allowances and benefits subject in this petition because it pertained to the approval of the grant of benefits/incentives to officials and employees of PCSO prior to September 8, 2010. Hence, it is not an unbridled authority to approve the grant of all past and future allowances. The COA further held that it could not be determined from the said letter which of the disallowed benefits were allegedly approved, as the list of allowances/benefits referred to was not presented or identified by the petitioners, hence, the subsequent approval cannot be considered as including the herein allowances.

Lastly, the COA ruled that the officials who authorized the grant of payments and the recipient-employees cannot be deemed in good faith, as the laws and rules requiring prior approval of the OP and the DBM were already existent prior to their grant of the subject benefits. Thus, the officials who authorized the grant of payments and recommended the approval of the payrolls, are solidarily liable for the total disallowed amount.

Issue

The main issue in this case is whether the COA committed grave abuse of discretion in upholding the 32 NDs on the various allowances and benefits received by the officials and employees of PCSO-LPDO.

Ruling of the Court

The petition has no merit. The Court resolves to uphold the disallowance since the petition utterly failed to show that the COA acted with grave abuse of discretion in sustaining the same.

The facts and the issues surrounding this petition are no longer novel since the same arguments posited by the petitioners have already come before this Court.

I. *The grant of the disallowed benefits has no legal basis.*

The Court already ruled that R.A. 1169[33] or the PCSO Charter, does not grant its Board the unbridled authority to fix salaries and allowances of its officials and employees. PCSO is still duty bound to observe pertinent laws and regulations on the grant of allowances, benefits, incentives and other forms of compensation. The power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives are still subject to the review of the DBM.

In any event, as correctly observed by the COA, the subject benefits and allowances are already integrated in basic salary and are without doubt proscribed allowances pursuant to R.A. 6758.[34] To determine whether the benefits and allowances are considered as excluded from the standardized salary rates of the PCSO officials and employees, reference must be made to the first paragraph of Section 12 of R.A. 6758.[35] The only allowances which government employees can continue to receive

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[33] An Act Providing for Charity Sweepstakes, Horse Races, and Lotteries (as amended by Batas Pambansa Blg. 42 and Presidential Decree No. 1157).

[34] An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes.

[35] Section 12. *Consolidation of Allowances and Compensation*. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein

in addition to their standardized salary rates are the following: (1) representation and transportation allowances (RATA); (2) clothing and laundry allowances; (3) subsistence allowance of marine officers and crew on board government vessels; (4) subsistence allowance of hospital personnel; (5) hazard pay; (6) allowance of foreign service personnel stationed abroad; and (7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

Since the benefits and allowances are not among those expressly excluded from integration by R.A. 6758, it should be considered integrated in the standardized salaries of the PCSO officials and employees under the general rule of integration.

In this case, the benefits and allowances were not among those excluded items from the integration into the standardized salary rates as previously determined by the DBM, hence, the grant thereof lacked legal basis and its continuous payment is unauthorized and illegal being contrary to law.

As things now stand, the governing boards of the GOCCs no longer wield the power to fix compensation and allowances of their personnel, including the authority to increase the rates, pursuant to their specific charters.[35]

II. ***The doctrine of non-diminution of benefits does not apply***

There can be no diminution of benefits since the allowances granted by PCSO to its officials and employees are not in accordance with prevailing laws and the payment thereof was due to an error in the construction or application of the law.

The Court has steadily held that, in accordance with Section 12 of R.A. 6758, allowances, fringe benefits, or any additional financial incentives, whether or not integrated into the standardized salaries prescribed by R.A. 6758, should continue

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prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

[35] *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, 821 Phil. 117, 131 (2017).

to be enjoyed by employees who were incumbents and were actually receiving those benefits as of July 1, 1989.

In this case, it was not established that the officials and employees of PCSO-LPDO were incumbents and were already receiving the subject benefits and allowances as of July 1, 1989. The PCSO also failed to establish that its officials and employees who were recipients of the disallowed benefits and allowances actually suffered a diminution in pay as a result of its consolidation into their standardized salary rates. Therefore, the principle of non-diminution of benefits finds no application to them. Moreso, institutional practice is not an excuse to allow disbursements that were otherwise contrary to law.[36]

III. *The release of the benefits is sourced from the 15% built-in restriction pursuant to PCSO's charter and is charged against the savings of PCSO*

Under the PCSO Charter, Section 6 (C)[38] thereof merely states, among others, that 15% of the net receipts from the sale of sweepstakes tickets (whether for sweepstakes races, lotteries, or other similar activities) shall be set aside as contributions to the operating expenses and capital expenditures of the PCSO.

The petitioners failed to take into account Section 6 (D)[39] of the same law which provides that "all balances of any funds in

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[36] *Id.* at 141.

[37] Note from the Publisher: Copied verbatim from the official document. Missing Footnote Reference and Footnote Text.

[38] Section 6. *Allocation of Net Receipts.* — From the gross receipts from the sale of sweepstakes tickets, whether for sweepstakes races, lotteries, or similar activities, shall be deducted the printing cost of such tickets, which in no case shall exceed two percent of such gross receipts to arrive at the net receipts. The net receipts shall be allocated as follows:

x x x x x x x x x

C. Fifteen (15%) percent shall be set aside as contributions to the operating expenses and capital expenditures of the Office.

[39] D. All balances of any funds in the Philippine Charity Sweepstakes Office shall revert to and form part of the charity fund provided for in paragraph (B), and shall be subject to disposition as above stated.

the Philippine Charity Sweepstakes Office shall revert to and form part of the charity fund provided for in paragraph (B),[40] and shall be subject to disposition as above stated."

From the foregoing, it is clear that the 15% built in restriction is allocated for operating expenses and capital expenditures of PCSO. By the clear import of its charter, all balances of any funds of PCSO revert to the Charity Fund and are not considered as savings which can be reallocated by the Board and be granted as benefits to its officials and employees.

IV. *The subsequent approval by the OP does not refer to the allowances and benefits subject of this petition*

In its Decision[41] dated March 5, 2014, the COA explained that the alleged approval by the OP is too vague as to be a source of rights, thus:

In a letter dated August 15, 2011 of Mr. Marianito M. Dimaandal, Director IV, Malacañang Records Office in response to the request of the Supervising Auditor, COA Office of the President, for a certified copy of the *ex-post facto* approval, he informed this Commission that the list of benefits/incentives approval therein is not among the records

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[40] B. Thirty percent (30%) shall be set aside as contributions to the charity fund from which the Board of Directors, in consultation with the Ministry of Human Settlements on identified priority programs, needs and requirements in specific communities and with the approval of the Office of the President (Prime Minister), shall make payments or grants for health programs, including the expansion of existing ones, medical assistance and services and/or charities of national character, such as the Philippine National Red Cross, under such policies and subject to such rules and regulations as the Board may from time to time establish and promulgate. The Board may apply part of the contributions to the charity fund to approved investments of the Office pursuant to Section 1 (B) hereof, but in no case shall such application to investments exceed ten percent (10%) of the net receipts from the sale sweepstakes tickets in any given year.

Any property acquired by an institution or organization with funds given to it under this Act shall not be sold or otherwise disposed of without the approval of the Office of the President (Prime Minister), and that in the event of its dissolution all such property shall be transferred to and shall automatically become the property of the Philippine Government.

[41] *Id*. at 99-107.

available on file or in the possession of their Office. Without certainty as to what various benefits/incentives are being allowed, the May 19, 2011 is too vague as to be a source of rights.[42]

The letter of Executive Secretary Ochoa pertained to the approval of the grant of benefits or incentives to officials and employees of PCSO prior to September 8, 2010, which is the effectivity date of Executive Order No. (EO) 7,[43] series of 2010. An examination of the nature of the moratorium imposed by EO 7 would show that the moratorium was imposed on the following: (1) increase in the rate of salary; and (2) grant of new increases in the rates of allowances, incentives, and other benefits. The clear directive is to halt the grant of additional salaries and allowances to employees and officers of government-owned and controlled corporations (GOCCs).

The COA went on to say that even assuming that the said letter validly allows the continuing of the said benefits and incentives, the disallowance must still be upheld:

> The letter specifies that there must be strict compliance with E.O. No. 7, E.O. 24 and all other related issuances on the grant of benefits and incentives to GOCCs and GFIs. Among these issuances is DBM Budget Circular No. 2006-1 dated February 1, 2006 because the disallowed benefits were allegedly granted in the PCSO-SEU CNA and this Budget Circular prescribes the rules in the grant of CNA.
>
> Section 5.7 of Budget Circular No. 2006-1 provides that the CNA Incentive shall be paid as a one-time benefit after the end of the year, provided that the planned/programs/activities/projects have been implemented and completed in accordance with the performance target of the year. Moreover, utilization and disbursement of funds for the payment of CNA shall be in accordance with the procedural guidelines and funding source set forth under Sections 6 and 7 of the aforementioned Circular.

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[42] *Id.* at 106.

[43] Directing the Rationalization of the Compensation and Position Classification System in the Government-Owned and -Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), and for Other Purposes.

In the case at bar, the disallowances were paid before the end of the year, in violation of the express command of Section 5.7. there is likewise no showing where the funds for these benefits were sourced.[44]

Evidently, where there is an express provision of the law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties on account of an error committed by public officials in granting the benefit.[45]

V. *The liability and refund of the officials and employees of PCSO-LPDO for the disallowed transactions.*

In the case of *PCSO v. Chairperson Pulido-Tan*,[46] the Court already discussed the liability of the PCSO officials, as well as the PCSO Board of Directors regarding the disallowed transactions, thus:

> On March 4, 2008, the PCSO Board of Directors, through Resolution No. 135, approved the payment of monthly cost of living allowance (COLA) to its officials and employees for a period of three (3) years in accordance with the Collective Negotiation Agreement. Pursuant thereto, in 2010, the PCSO released the sum of P381,545.43 to all qualified officials and employees of its Nueva Ecija Provincial District Office. A year after, on March 19, 2011, Executive Secretary Paquito N. Ochoa, Jr. confirmed the benefits and incentives provided for in Resolution No. 135, but with a directive to the PCSO to strictly abide by Executive Order (E.O.) No. 7 that imposed a moratorium on any grant of new or increase in the salaries and incentives until specifically authorized by the President.[47]
>
> x x x x x x x x x
>
> In [line with this], the PCSO Board of Directors who approved Resolution No. 135 are liable. Their authority under Sections 6 and 9 of R.A. No. 1169, as amended, is not absolute. They cannot deny knowledge of the DBM and PSLMC issuances that effectively prohibit

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[44] *Id.* at 106-107.

[45] *PCSO v. Chairperson Pulido-Tan*, 785 Phil. 266, 285 (2016).

[46] 785 Phil. 266 (2016).

[47] *Id.* at 272.

the grant of the COLA as they are presumed to be acquainted with and, in fact, even duty-bound to know and understand the relevant laws/rules and regulations that they are tasked to implement. Their refusal or failure to do does not exonerate them since mere ignorance of the law is not a justifiable excuse. As it is, the presumptions of "good faith" and "regular performance of official duty" are disputable and may be contradicted and overcome by other evidence.

The same thing can be said as to the five PCSO officials who were held accountable by the COA. They cannot approve the release of funds and certify that the subject disbursement is lawful without ascertaining its legal basis. If they acted on the honest belief that the COLA is allowed by laws/rules, they should have assured themselves, prior to their approval and the release of funds, that the conditions imposed by the DBM and PSLMC, particularly the need for the approval of the DBM, Office of the President or legislature, are complied with. Like the members of the PCSO Board, the approving/certifying officers' positions dictate that they are familiar of governing laws/rules. Knowledge of basic procedure is part and parcel of their shared fiscal responsibility. They should have alerted the PCSO Board of the validity of the grant of COLA. Good faith further dictates that they should have denied the grant and refrained from receiving the questionable amount.[47]

Accordingly, the named PCSO-LPDO officials in this case, who implemented the same, authorized its release without ascertaining its legal basis and even received the disallowed amounts, are held liable. Despite the lack of authority for granting the said allowances and benefits, they still approved its grant and release in excess of the allowable amounts and extended the same benefits to other officials and employees, as well as to themselves, in deliberate violation of the letter and spirit of R.A. 6758 and related laws. Since the subject disallowances were invalidly released, it only follows that the PCSO-LPDO employees received the disallowed amounts without valid basis or justification.

Lastly, as to the recipients of the disallowed benefits, the Court already settled this issue of whether the officials and

[47] *Id.* at 290-291.

employees of the disallowed transactions should be held accountable and be ordered to refund the disallowed amount in the recent case of *Madera v. COA*,[48] where the Court made the following pronouncement:

> 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 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.[49]

As it now stands, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. The exceptions to payee liability, as cited by the Court in the case of *Madera*, includes payees who can show that the amounts received were granted in consideration for services actually rendered, or when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. The Court further

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

[49] *Id*.

said that the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will have to be done by the Court on a case-to-case basis.[51]

Guided by the foregoing norms, the approving and certifying officers, the recipients of the benefits, both officials and employees alike, who had no participation in the approval and release of the disallowed benefits, even if they have acted in good faith due to their honest belief that the grant of the said allowances and benefits had legal basis, are now liable to refund the disallowed amounts.

WHEREFORE, the petition is **DISMISSED**. The Decision dated November 23, 2017 and the Resolution dated August 16, 2018 of the Commission on Audit, which affirmed the 32 Notice of Disallowances received by the officials and employees of PCSO-Laguna Provincial District Office, are hereby **AFFIRMED with MODIFICATION**. The certifying and approving officers, as well as all the employees of the PCSO-LPDO, are liable to return what they had individually received. They must reimburse the amounts they individually received through salary deduction, or any other mode which the Commission on Audit may deem just and proper under the circumstances.

SO ORDERED.

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

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[50] Note from the Publisher: Copied verbatim from the official document. Missing Footnote Reference and Footnote Text.

[51] *Id.*

FIRST DIVISION

[G.R. No. 244129. December 9, 2020]

ELEONOR SAROL, *Petitioner, v.* **SPOUSES GEORGE GORDON DIAO AND MARILYN A. DIAO, ET AL.,** *Respondent*.

APPEARANCES OF COUNSEL

Orlando V. Remollo for petitioner.
Dupio Dupio & Senires for respondents.

D E C I S I O N

CARANDANG, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Resolution[2] dated December 13, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 12099 which dismissed the Petition for Annulment of Judgment[3] filed by petitioner Eleonor Sarol (Sarol) against respondents Spouses George Gordon Diao and Marilyn Diao (Spouses Diao), and Sheriff IV Norman Stephen Tale (Sheriff Tale) of the Regional Trial Court (RTC) of Dumaguete City, Branch 44.

Facts of the Case

Sometime in 2007, petitioner Sarol purchased from a certain Claire Chiu a parcel of land located in Guinsuan, Poblacion, Zamboanguita, Negros Oriental. The parcel of land has an area of 1,217 square meters and is designated as Lot No. 7150. Sarol claims to have purchased the property for ₱2,000,000.00, where

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[1] *Rollo*, pp. 27-53.

[2] Penned by Associate Justice Dorothy P. Montejo-Gonzaga, with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of the Court) and Edward B. Contreras; *id*. at 6-14.

[3] *Id*. at 56-72.

she initially paid ₱1,800,000.00 and settled the remaining balance amounting to ₱200,000.00 in 2011. On July 20, 2011, the Deed of Sale over the property was executed in view of payment of the remaining balance worth ₱200,000.00. Accordingly, the Original Certificate of Title (OCT) No. FV-44750 registered in the name of Claire Chiu was cancelled and Transfer Certificate of Title (TCT) No. 103-2012000605 was issued in the name of Sarol on February 16, 2012.[4]

Sarol had been in possession of the property since 2007 and began developing a beach resort. She eventually left the Philippines to reside in Germany. Her father, Emproso Sarol, was made to manage all her assets in the Philippines, including the beach resort and Lot No. 7150. Sarol also left Marie Jeane Alanta-ol to manage the beach resort.[5]

Spouses Diao claim that their property is adjacent to Lot No. 7150. Prior the sale of said property to Sarol, Claire Chiu caused to survey the property yielding an area of 1,217 square meters. However, the area, as surveyed, is erroneous because it included 464 square meters of Spouses Diao's property. In 2009, Spouses Diao learned of this overlap. They immediately demanded Claire Chiu and Sarol to return their portion of the property, but to no avail.[6] In 2015, Spouses Diao filed a complaint[7] with the RTC Branch 44, Dumaguete City docketed as Civil Case No. 2015-15007 entitled *Spouses George Gordon Diao and Marilyn Diao v. Claire Chiu, joined by her husband Ginghis Gamaliel D. Chiu, the Register of Deeds of Negros Oriental and Eleonor Sarol*. Spouses Diao sought to partially cancel the contracts from which Claire Chiu derived ownership over Lot No. 7150, to reconvey an area of 464 square meters from said property in their favor and to hold Claire Chiu and Sarol liable for damages.[8]

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[4] *Id*. at 57-58.

[5] *Id*.

[6] *Id*. at 105-106.

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

[8] *Id*. at 107-108.

Ruling of the Regional Trial Court

In the course of the proceedings for the abovementioned case, summons[9] was issued for service to Claire Chiu, her husband Ginghis Chiu, the Register of Deeds of Negros Oriental, and Sarol. The address of Sarol indicated in the summons states "Guinsuan, Poblacion, Zamboanguita, Negros Oriental,"[10] or the location of the property she purchased from Claire Chiu. On April 16, 2015, respondent Sheriff Tale issued a Sheriff's Return of Summons,[11] which states that summons was served on Claire Chiu but could not be served to Sarol "on the ground that she is out of the country."[12] Spouses Diao then moved for the issuance of alias summons.[13] In the Sheriff's Return dated July 25, 2015,[14] Sheriff Tale stated his three failed attempts to personally serve the alias summons to Sarol at Guinsuan, Poblacion, Zamboanguita, Negros Oriental. Sheriff Tale narrates that on July 10, 2015, the alias summons was not served because nobody was around the location. In the evening of the same date, he, again, failed to serve the alias summons after receiving information from the caretaker that Sarol left a few days ago. Early morning of July 11, 2015, Sheriff Tale spoke with the caretaker and learned that Sarol arrived in the Philippines on July 3, 2015 and left for Germany on July 7, 2015; that the caretaker had no idea of Sarol's return.[15] For this reason, Spouses Diao moved that summons be served by publication in a newspaper of general circulation in the City of Dumaguete and in the Province of Negros Oriental pursuant to Section 15, Rule 14 of the Rules of Court on extraterritorial service of summons.[16]

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[9] *Id*. at 120.

[10] *Id*.

[11] *Id*. at 121.

[12] *Id*.

[13] *Id*. at 122.

[14] *Id*. at 61.

[15] *Id*.

[16] *Id*. at 125-126.

In an Order dated February 5, 2016, the RTC directed service of summons on Sarol by publication in a newspaper of general circulation in the City of Dumaguete and in the Province of Negros Oriental, for two consecutive weeks and to send copies of the summons and of the order by registered mail to the last known address of Sarol in Guinsuan, Poblacion, Zamboanguita Negros Oriental.[17]

Claire Chiu filed her answer to the complaint, but failed to appear at the pre-trial proceedings. Sarol, on the other hand, failed to file any pleadings with the RTC. Upon motion of Spouses Diao, Claire Chiu and Sarol were declared in default in an Order[18] dated January 25, 2017. The Order became final and executory allowing Spouses Diao to present their evidence *ex-parte*. On December 13, 2017, the RTC rendered a Decision[19] in favor of Spouses Diao. The dispositive portion of the Decision of the RTC reads,

> **WHEREFORE**, judgment is hereby rendered:
>
> 1. Declaring the Deed of Confirmation and Ratification of Sale and the Deed of Absolute Sale partially null and void and of no legal effect insofar as they affect the plaintiffs lot;
> 2. Ordering the defendants to reconvey to the plaintiff the 464-square-meter portion of Lot No. 7150, Pls-847, identical to Lot No. 2788-B, CSD-07-010295, by executing a deed of conveyance;
> 3. Ordering the defendants Chiu to pay plaintiff Thirty Thousand Pesos (PHP30,000) as moral damages, and PhpP15,000 as exemplary damages;
> 4. Ordering defendants Chiu to pay plaintiffs attorney's fees of fifteen thousand Pesos (PHP15,000) based on *quantum meruit*; and
> 5. Dismissing the counterclaim for lack of merit.
>
> Costs against the defendants.
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> **SO ORDERED**.[20] (Emphasis in the original)

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[17] *Id*. at 130.

[18] *Id*. at 140.

[19] Penned by Presiding Judge Neciforo C. Enot; *id*. at 155-160.

[20] *Id*. at 220-225.

The Decision of the RTC attained finality. Thereafter and on motion of Spouses Diao, the RTC issued a Writ of Execution[21] dated May 2, 2018.

In view of the finality of the Decision of the RTC, Sarol filed a Petition for Annulment of Judgement[22] under Rule 47 of the Rules Court with the CA. She sought to invalidate the Decision of the RTC because the court *a quo* did not acquire jurisdiction over her person. Sarol argued that she was not served with any summons relating to the case instituted by Spouses Diao.[23]

Ruling of the Court of Appeals

In the assailed Resolution[24] dated December 13, 2018, the CA dismissed the petition for annulment of judgment. The CA held that Sarol is a Filipino resident, who was temporarily out of the country. Thus, the rules on service of summons under Section 16, Rule 14 of the Rules of Court is applicable. Under Section 16, service of summons, to a resident defendant, who is temporarily out of the country, may be effected by modes provided for in Section 15, Rule 14 of the Rules of Court. Following Section 15 on extraterritorial service of summons, one of the modes of service may be "effected x x x by publication in a newspaper of general circulation, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant x x x." The CA found that personal service of the summons and the alias summons could not be effected at Sarol's address in Guinsuan, Poblacion, Zamboanguita, Negros Oriental because Sarol was out of the country. Thus, Spouses Diao moved for the service of summons by publication which the RTC granted in an Order dated February 5, 2016. The CA held that summons was clearly served on the person of Sarol by publication. Having failed to

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[21] *Id*. at 161-162.

[22] *Id*. at 56-72.

[23] *Id*. at 71-72.

[24] *Supra* note 2.

timely file an answer to the complaint, Sarol was declared in default. Further, the CA held that Sarol failed to show clear facts and laws for the petition for annulment of judgment to prosper.[25]

Petitioner's Arguments

Unsatisfied with the Decision of the CA, Sarol filed the instant petition before this Court reiterating that the RTC did not acquire jurisdiction over her person. Sarol argued that there was a defective service of summons by Sheriff Tale. While she is named a recipient of the summons, the address, Guinsuan, Poblacion, Zamboanguita, Negros Oriental, was incorrect. Sarol argued that she never became a resident at said address. Her last known address in the Philippines was in *Barangay* Tamisu, Bais City, Negros Oriental. She claimed that after her purchase of the subject property from Claire Chiu, she migrated to Germany. Hence, personal service of the summons could not have validly been effected.[26]

Other modes of service of summons were also not proven to have been successfully executed. The substituted service of summons under Section 7, Rule 14 of the Rules of Court provides that such mode of service may be effected by leaving copies of the summons: (a) at the defendant's residence with some person of suitable age and discretion then residing therein; or (b) at defendant's office or regular place of business with some competent person in charge thereof. Sarol asserted failure on the part of Sheriff Tale to effect service of summons under this rule. If Sarol's residential address was indeed at Guinsuan, Poblacion, Zamboanguita, Sheriff Tale could have easily served the alias summons to Sarol's caretaker at the beach resort built on the subject property. In this case, Sarol argued that there was no proof of the successful substituted service of the alias summons.[27]

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[25] *Rollo*, pp. 10-13.

[26] *Id*. at 30-32.

[27] *Id*. at 32-33.

Sarol also argued that the RTC erred in allowing the service of summons by publication because none of the rules for such mode of service are applicable. *First*, Section 14, Rule 14 of the Rules of Court provides that service by publication shall be resorted to when: (1) the defendant is unknown or the like; and (2) whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry. None of the foregoing conditions are present in Sarol's case because Spouses Diao knew that she was one of the defendants to the case and that she resided in Germany. *Second*, Section 15, Rule 14 of the Rules of Court on extraterritorial service of summons by publication requires that a copy of the summons and order of the court be sent by registered mail to the last known address of the defendant. Sarol claims that there was no mail to her last address in the Philippines in Barangay Tamisu, Bais City, Negros Oriental or to her residence in Germany. *Third*, Section 16, Rule 14 of the Rules of Court provides that extraterritorial service of summons shall be made when a resident defendant is temporarily out of the Philippines. Sarol argues that this rule is inapplicable because she is a permanent resident in Germany.[28] *Finally*, Sarol claims that no affidavit of the publisher, editor or advertising manager was presented as proof of service by publication required under the Rules of Court.[29]

Respondent's Arguments

In their Comment,[30] Spouses Diao claim that there is no truth to Sarol's lack of knowledge of the pendency of the case. They argue that Sarol returns to the beach resort every year, and that the resort caretaker had a pre-arranged agreement with Sheriff Tale to inform the latter when Sarol is in the Philippines. However, when Sheriff Tale made inquiries of Sarol's return to the country, the caretaker had a ready reply that Sarol already left. Sarol clearly evaded the service of summons, leaving Spouses Diao with no other choice but to

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[28] *Id*. at 36-42.

[29] *Id*. at 42-44.

[30] *Id*. at 1306-1307.

resort to serve summons by publication. Moreover, a Petition for Annulment of Judgment may be resorted when there is no available or adequate remedy. Here, Spouses Diao argue that Sarol lost her opportunity to defend her case for deliberately evading the service of summons.[31]

Ruling of the Court

The proper service of summons is important because it serves to acquire jurisdiction over the person of the defendant or respondent, or to notify said person of the action filed against them and to afford an opportunity to be heard on the claims made against them.[32] Logically, in order to effect the proper service of summons it is crucial to furnish the correct address of the defendant or respondent in a complaint. The foregoing is in consonance with the doctrine of due process. A violation of this due process would be a jurisdictional defect.[33] Thus, absent the proper service of summons, the trial court does not acquire jurisdiction and renders null and void all subsequent proceedings and issuances in relation to the case.[34]

Here, the summons and *alias* summons issued by the court *a quo* to Sarol indicated her residential address at "Guinsuan, Poblacion, Zamboanguita, Negros Oriental."[35] The address is undisputedly the location of the property, which is the subject matter of this case. We find that in the complaint for reconveyance[36] filed by Spouses Diao with the RTC of Dumaguete City, Branch 44, Sarol was included as a party-

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[31] *Id*.

[32] Herrera, O., *Remedial Law Vol. 1*, 2000 Ed., p. 665, citing *Ablaza v. CIR*, 211 Phil. 425, 431 (1983); *Paramount Insurance Corporation v. Judge Japzon*, 286 Phil. 1048, 1055 (1992); *Toyota Cubao, Inc. v. CA*, 346 Phil. 181, 186 (1997).

[33] *De Pedro v. Romasan Development Corp.*, 748 Phil. 706, 726 (2014).

[34] Herrera, O., *Remedial Law Vol. 1*, 2000 Edition, p. 665, citing *Toyota Cubao, Inc. v. CA*, 346 Phil. 181, 187 (1997), which cited *Keister v. Judge Navarro*, 167 Phil. 567, 572 (1977).

[35] *Rollo*, p. 369.

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

defendant for being the purchaser of the disputed property from co-defendant Claire Chiu.[37] To Our mind, as Sarol purchased the disputed property located in Guinsuan, Poblacion, Zamboanguita, Negros Oriental, Spouses Diao considered the location of the property to be Sarol's place of residence. However, the records pertaining to Sarol's claim over the subject property reveal that her place of residence is in Tamisu, Bais City, Negros Oriental. The Deed of Sale[38] dated July 20, 2011 between Sarol and Claire Chiu indicates that Sarol's residence is in "Tamisu, Bais City."[39] TCT No. 103-2012000605[40] or the transfer certificate of title registered under Sarol's name for the subject property also indicates that Sarol's place of residence is in "Tamisu, Bais City, Negros Oriental, Central Visayas."[41] Absent any allegation and evidence to prove otherwise, We give credence to Sarol's position that her place of residence is **not** in Guinsuan, Poblacion, Zamboanguita, Negros Oriental. For this reason, the service of summons should have been made in Tamisu, Bais City, Negros Oriental.

The preferred mode of service of summons shall be done personally upon the defendant or respondent.[42] However, our rules set out other modes of service. Section 7, Rule 14[43] of the Rules of Court allows the substituted service of summons if, for justifiable causes, the defendant cannot be served within a

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[37] *Id*. at 104-105.

[38] *Id*. at 329.

[39] *Id*.

[40] *Id*. at 338.

[41] *Id*.

[42] *Supra* note 33 at 727.

[43] RULE 14 — Summons

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Section 7. *Substituted service*. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

reasonable time. It shall be effected by leaving copies of the summons: (a) at the defendant's residence with some person of suitable age and discretion residing therein; or (b) at the defendant's place of business with some competent person in charge thereof. "Dwelling house" or "residence" refers to the place where the person named in the summons is living at the time when the service is made, even though he may be temporarily out of the country at the time. Similarly, the terms "office" or "regular place of business" refer to the office or place of business of defendant at the time of service.[44] As discussed, We found that the address in Guinsuan, Poblacion, Zamboanguita, Negros Oriental is not Sarol's place of residence. Therefore, service of summons to Sarol, even by substituted service, should have been effected in Tamisu, Bais City, Negros Oriental. Assuming that Guinsuan, Poblacion, Zamboanguita, Negros Oriental is Sarol's regular place of business, We find that there was no substituted service effected. The Sheriff's Return of Summons[45] dated April 16, 2015 and Sheriff's Return of Alias Summons[46] dated July 25, 2015 report the unsuccessful service to Sarol because she is out of the country. Sheriff Tale accounted in the Return of Alias Summons that he merely inquired from the caretaker the whereabouts of Sarol.[47] From the foregoing, the returns of the sheriff do not state that substituted service of summons was made to the designated persons provided under Section 7, Rule 14.

Spouses Diao are not totally without recourse as the rules allow summons by publication and extraterritorial service. These are extraordinary modes which require leave of court.[48] In fact, in view of Sheriff Tale's reports of failure to serve summons on Sarol, Spouses Diao moved for the extraterritorial service

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[44] *Express Padala (Italia) S.P.A. v. Ocampo*, 817 Phil. 911, 919 (2017), citing *Keister v. Judge Navarro*, 167 Phil. 567, 573-574 (1977).

[45] *Rollo*, p. 370.

[46] *Id.* at 61.

[47] *Id.*

[48] RULES OF COURT, Rule 14, Section 17; *supra* note 44 at 920.

of summons by publication under Section 15,[49] Rule 14 of the Rules of Court.[50] Under this rule, one of the modes to effect the extraterritorial service of summons is by publication in a newspaper of general circulation in such places and for such time as the court may order, **in which case a copy of the summons and order of the court shall be sent by registered mail to the last known correct address of the defendant**. Furthermore, to avail this mode, the action or complaint filed against a non-resident defendant: (1) affects the personal status of the plaintiff or relates to; or (2) the subject of which, is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; or (3) in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein; or (4) the property of the defendant has been attached within the Philippines. We emphasize that it is the duty of the court to require the fullest compliance with all the requirements of the statute permitting service by publication. Where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted.[51]

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[49] Section 15. *Extraterritorial service*. — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

[50] *Rollo*, pp. 125-126.

[51] *Acance v. Court of Appeals*, 493 Phil. 676, 688 (2005), citing *Dulap v. CA*, 149 Phil. 636, 649 (1971).

Here, as Sarol is out of the country and the action pertains to her interest over a parcel of land located in the Philippines, the RTC granted the extraterritorial service on Sarol by publication in a newspaper of general circulation in the City of Dumaguete and in the Province of Negros Oriental, for two consecutive weeks and to send copies of the summons and of the order of the court *a quo* by registered mail to the last known address of Sarol in Guinsuan, Poblacion, Zamboanguita Negros Oriental.[52] Following the provisions of Section 15, Rule 14 of the Rules of Court and the aforementioned order of the court, publication must be duly observed and copies of the summons and order of the court be served at Sarol's last known correct address by registered mail, as a complement to the publication. The failure to strictly comply with the requirements of the rules regarding the mailing of copies of the summons and the order for its publication is a fatal defect in the service of summons. Considering that Sarol's last known address is in Tamisu, Bais City, Negros Oriental, copies of the summons and order of the court must be sent to this address. As Spouses Diao furnished an address in Guinsuan, Poblacion, Zamboanguita, Negros Oriental, service of summons by publication is defective in view of the failure to mail the requirements of Section 15, Rule 14 to the correct address of Sarol. Relatedly, the findings of the CA on service of summons by publication under Section 16,[53] Rule 14 of the Rules of Court cannot be considered proper because this rule also follows the same procedures set out in Section 15, Rule 14 of the Rules of Court on publication and mailing to the last known correct address of the defendant or respondent. Spouses Diao only assert compliance with publication of summons in Dumaguete City and Negros Oriental. There were no records presented showing proof of service by

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[52] *Rollo*, p. 130.

[53] Section 16. Residents temporarily out of the Philippines. — When any action is commenced against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it, service may, by leave of court, be also effected out of the Philippines, as under the preceding section.

registered mail of the summons and the order of the court to the last known address of Sarol as required under the rules by the court *a quo* in this case.

We reiterate that the service of summons is vital and indispensable to defendant's right to due process.[54] A violation of this due process is a jurisdictional defect[55] which renders null and void all subsequent proceedings and issuances in relation to the case.[56] Thus, the judgment[57] and the Writ of Execution[58] issued by the RTC of Dumaguete City, Branch 44 in Civil Case No. 2015-15007 is null and void. In which case, We find that Sarol's availment of the petition for annulment of judgement under Rule 47 of the Rules of Court[59] is proper. Our rules explicitly provide that lack of jurisdiction is one of the grounds in a petition for annulment of judgment.[60] Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner.[61] In cases involving jurisdiction over the subject matter, We have recognized denial of due process as a valid ground to file a petition for annulment of judgment.[62]

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[54] *San Pedro v. Ong*, 590 Phil. 781, 795 (2008).

[55] *Supra* note 33.

[56] *Supra* note 34.

[57] *Supra* note 19.

[58] *Supra* note 21.

[59] *Rollo*, p. 57.

[60] Section 2, Rule 47 of the Rules of Court.

Section 2. *Grounds for annulment*. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

[61] *Mangubat v. Morga-Seva*, 773 Phil. 399, 409 (2015), citing *Pinausukan Seafood House, Roxas Blvd., Inc. v. Far East Bank & Trust Co.*, 725 Phil. 19, 35 (2014).

[62] *Arrieta v. Arrieta*, G.R. No. 234808, November 19, 2018.

Section 1[63] of Rule 47 of the Rules of Court provides that this remedy shall be available where the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. Further, a petition for annulment of judgment because of lack of jurisdiction over the person or subject matter may be proved at most by the evidence on record but never by extraneous evidence.[64] Had there been the proper service of summons, Sarol would have had such remedies as, a motion for new trial, appeal, *certiorari*, petition for relief from judgment, among others, to assail the Decision of the RTC of Dumaguete City, Branch 44. In view of the failure to properly serve summons, Sarol could not have learned of the instant case and had no other recourse but to file a petition under the extraordinary remedy of annulment of judgment provided in Rule 47 of the Rules of Court.

WHEREFORE, the petition is **GRANTED**. The Resolution dated December 13, 2018 of the Court of Appeals in CA-G.R. SP No. 12099 is **REVERSED** and **SET ASIDE**. The Decision dated December 13, 2017 and the Writ of Execution dated May 2, 2018 of the Regional Trial Court of Dumaguete City, Branch 44 in Civil Case No. 2015-15007 are declared **NULL** and **VOID**.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

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[63] RULE 47 — Annulment of Judgments of Final Orders and Resolutions Section 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

[64] Herrera, O., *Remedial Law Vol. II*, 2000 Ed., p. 697, citing *Arcelona v. Court of Appeals*, 345 Phil. 250 (1997).

FIRST DIVISION

[G.R. No. 245457. December 9, 2020]

MARILYN D. CLAVERIA, *Petitioner, v.* **CIVIL SERVICE COMMISSION,** *Respondent.*

APPEARANCES OF COUNSEL

Cielito A. Martinez for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARANDANG, *J.*:

For review is the Decision[1] dated June 26, 2018 and the Resolution[2] dated February 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 150189, which affirmed Decision No. 161484[3] dated November 22, 2016 of respondent Civil Service Commission (CSC). The CSC's decision recalled petitioner Marilyn D. Claveria's (Claveria) appointment as Special Investigator III of the Bureau of Fire Protection (BFP).

Antecedents

On September 10, 2014, Claveria was appointed as BFP's Special Investigator III after passing a screening process by the Personnel Selection Board.[4] The position (which was solely applied for by Claveria) was previously published in the BFP and CSC's respective websites. The said Notice of Publication[5] stated:

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[1] Penned by Maria Elisa Sempio Diy, with the concurrence of Associate Justices Marlene B. Gonzales-Sison and Maria Filomena D. Singh; *rollo*, pp. 8-24.

[2] *Id*. at 73-75.

[3] Promulgated by Chairperson Alicia Dela Rosa-Bala and Commissioner Robert S. Martinez, attested by Director IV Dolores B. Bonifacio; *id*. at 122-127.

[4] *Id*. at 9.

[5] *Id*. at 202-203.

NOTICE OF PUBLICATION
Publication Control No. PS-2014-005
As of 04 June 2014

x x x x x x x x x

Region: NHQ Place of Assignment: Fire Suppression & Inv. Division
Position Title: Special Investigator III Salary Grade (SG): 18

ITEM NO(s): **New Item (1 Special Investigator III vacant position)**

QUALIFICATION STANDARDS:

Education	:	Bachelor's degree relevant to the job
Experience	:	2 years of relevant experience
Training	:	8 hours of relevant training
Eligibility	:	Career Service (Professional), Second Level Eligibility

x x x x x x x x x[6]

However, Director II Claudia Abalos-Tan (Dir. Tan) of the CSC Field Office-Department of the Interior and Local Government (CSCFO-DILG) disapproved Claveria's appointment in a Letter[7] dated December 12, 2014, the pertinent portion of which reads:

> Inasmuch as the subject position belongs to the non-uniformed group, the Fire Officer Eligibility cannot be used to meet the eligibility requirement of the position.
>
> Hence, the appointment of Marilyn D. Claveria to Special Investigator III is **DISAPPROVED** for failing to meet the required eligibility for the position.[8]

Dir. Tan's basis in finding Claveria ineligible for the position of Special Investigator III was Item No. 4 of CSC Resolution No. 1202190[9] *(Re: Conduct of Fire Officer Examination and Grant of Fire Officer Eligibility)*, which stated:

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[6] *Id*. at 202.

[7] *Id*. at 83.

[8] *Id*.

[9] *Id*. at 85-86.

4. Grant a Fire Officer Eligibility to the Examinees who will pass the FOE, based on the test standard to be set by the Commission, which is appropriate for appointment to second level ranks in the fire protection service and functionally related positions only, except for ranks in the Philippine National Police.[10]

Claveria appealed[11] the disapproval with the CSC-National Capital Region (NCR) by comparing the Qualification Standards (QS) for the position of Special Investigator III with her personal record as basis to her claim of eligibility, *viz.*:

	Special Investigator III	**Claveria's Qualifications**
Education	Bachelor's degree relevant to the job	Bachelor of Science in Criminology
Training	8 hours of relevant training	Orientation Seminar on Fire Arson Investigation & Evidence Collection for Female Firefighters (24 hours)
Experience	2 years of relevant experience	Intelligence Agent Aide/Officer 2003 to 2014
Eligibility	Career Service (Professional)/Second Level Eligibility	Fire Officer Eligibility[12]

By emphasizing on the similarities between Claveria's qualifications and the requirements for the position of Special Investigator III, Claveria insisted that her Fire Officer Eligibility is compliant with the eligibility requirements of a Special Investigator III. Claveria maintained that the Fire Officer Eligibility applies to both uniformed and non-uniformed positions. Rebutting Dir. Tan's disapproval, Claveria averred that the phrase "second level ranks in the fire protection service and functionally related positions"[13] includes non-uniformed

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[10] *Id.* at 86.

[11] *Id.* at 89-100.

[12] *Id.* at 91-92.

[13] Underscoring supplied. *Id.* at 93, citing CSC Resolution No. 12-02190, which states:

positions such as that of a Special Investigator III, as evidenced by the congruence between the functions of a Special

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WHEREAS, the Civil Service Commission (CSC), as the central personnel agency of the government, is mandated by the Constitution to establish a career service in all levels of the government, and to ensure that appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, by competitive examinations;

WHEREAS, Republic Act (RA) No. 9263 dated March 10, 2004, otherwise known as the "*Bureau of Fire Protection (BFP) and Bureau of Jail Management and Penology (BJMP) Professional Act of 2004*" provides that no person shall be appointed as uniformed employees of the BFP and BJMP unless he/she possesses the appropriate civil service eligibility and those who will fail to satisfy the minimum requirements within five (5) years upon the effectivity of the said Act or until 2009 shall be separated from the service;

WHEREAS, Republic Act No. 9592, dated May 8, 2009, otherwise known as "*An Act Extending for Five (5) Years the Reglementary Period for Complying with the Minimum Educational Qualification and Appropriate Eligibility in the Bureau of Fire Protection (BFP) and the Bureau of Jail Management and Penology (BJMP), amending for the purpose certain provision (sic) of Republic Act No. 9263 and for other purpose (sic)*" provides for an extension of another five (5) years or until 2014 for the uniformed employees to obtain the minimum educational qualification and appropriate eligibility and those who will fail to satisfy any of these requirements within the 5-year period shall be separated from the service;

WHEREAS, prior to the implementation of RA No. 9263, the CSC, based on the request of the BFP, has conducted Fire Officer Examination I and II for first and second level, respectively in December 2002, and a second level Fire Officer Examination in 2005, 2006, and 2008, which cover Fire Prevention, Fire Suppression, Fire/Arson Investigation, and BFP Administrative Matters, qualifiers of which were granted a Fire Officer Eligibility appropriate for appointment to ranks in the BFP;

WHEREAS, per representation of the BFP, there are incumbent employees who still hold appointments under temporary status because of lack of eligibility, while other possess only National Police Commission (NAPOLCOM) and first level eligibilities, which are not appropriate to higher second level fire officer ranks;

WHEREAS, to professionalise the ranks in the BFP and to address the immediate need for eligible in the Bureau, the CSC shall conduct the Fire Officer Examination Starting 2013.

WHEREFORE, the Commission hereby **RESOLVES** to:

1. Conduct the Fire Officer Examination yearly from 2013 to 2014 in accordance with the reglementary period set under RA 9592 and every other year thereafter starting 2016;

Investigator III, the BFP's mission/vision, and the functions of second level ranks. Claveria asserted that a Fire Officer Eligibility is a more appropriate eligibility requirement for the position of a Special Investigator III than a generic Career Service Professional Eligibility.[14]

Ruling of the CSC-NCR

In Decision No. 150101[15] dated March 6, 2015, the CSC-NCR granted Claveria's appeal, thus, approved her permanent appointment as Special Investigator III. The CSC-NCR conclude that Claveria complied with CSC Resolution No. 1202190 by proving the functional relatedness between the duties of a Special Investigator III and those in the second level ranks of the BFP. It held:

> A comparison of the duties and responsibilities of the foregoing positions shows *(sic)* that they are functionally related. [A p]erusal of the duties and responsibilities being discharged by the foregoing BFP personnel categorically showed that the same work towards the accomplishment of BFP's mandate of providing a modern fire protection agency that will prevent and suppress destructive fires, investigate its causes, provide emergency medical and rescue services and enforce fire-related laws (Section 54 of Republic Act No. 6975). Evidently, the foregoing positions involve the discharge of duties

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2. Accept the following applicants who have not yet acquired a second level eligibility:
2.1 incumbent employees of the BFP; and
2.2 other government employees and private individuals who are interested to join the fire protection service.
3. Collect from each applicant an examination fee of Php700.00 for the 2013 FOE. The fee for succeeding FOEs shall be approved by the Commission based on prevailing cost in the preparation and conduct of the examination; and
4. Grant a Fire Officer Eligibility to the Examinees who will pass the FOE, based on the test standard to be set by the Commission, which is appropriate for appointment to second level ranks in the fire protection service and functionally related positions only, except for ranks under the Philippine National Police.

[14] *Rollo*, pp. 93-94.

[15] Penned by Director IV Lydia Alba-Castillo; *id*. at 105-108.

and responsibilities that are similar and related to the duties and responsibilities of an SI III.[16] (Emphasis and citation omitted)

This prompted the Legal Affairs Service of the BFP-National Headquarters to write a letter[17] dated June 2, 2015 to the chairman of the CSC, praying that the latter recall the Claveria's appointment for violating Item No. 15[18] of the Revised Policies on Merit Promotion Plan or the Three Salary Grace Limitation because Claveria's appointment would result in a jump in her salary grade (SG) from SG 6 to SG 18.[19]

Ruling of the Civil Service Commission

In Decision No. 161484[20] dated November 22, 2016, the CSC treated the letter as a Petition for Review and granted the same. Although the CSC did not apply the Three Salary Grade Limitation because Claveria's appointment was not a promotion but a change of status, the CSC still found it proper to recall Claveria's appointment. Applying the principle of *ejusdem generis*, the CSC held that the Fire Officer Eligibility applied only to functionally related uniformed positions, to wit:

> While the Commission notes that the [Special Investigator III] position may involve functions which may be related to that of second level ranks in the fire protection service, however, it cannot deny the fact that [Special Investigator III] position belongs to the non-uniformed position which is a service-wide position requiring a Career

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[16] *Id*. at 108.

[17] *Id*. at 113-114.

[18] Item No. 15 of the Revised Policies on Merit Promotion Plan states:

> x x x x x x x x x
> 15. An employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee's present position except in very meritorious cases, such as: if the vacant position is next-in-rank as identified in the System of Ranking Positions (SRP) approved by the head of agency, or the lone or entrance position indicated in the agency staffing pattern.

[19] *Rollo*, pp. 113-114.

[20] *Supra* note 3.

Service Professional eligibility. Since Claveria is deficient in the required eligibility, she cannot be validly issued a permanent appointment to the subject position.[21]

Claveria moved to have Decision No. 161484 reconsidered[22] on the following grounds: (1) the decision is not supported by evidence on record;[23] (2) CSC erred in entertaining the letter by someone who is not a party-in-interest;[24] (3) the letter was filed beyond the 15-day reglementary period to file an appeal;[25] and (4) the decision incorrectly ruled that the term "functionally related positions" only referred to uniformed positions.[26] However, the same was denied in Resolution No. 1700600[27] dated March 7, 2017.

Aggrieved, Claveria filed a Petition for Review[28] under Section 4, Rule 43 of the Rules of Court with the CA.

Ruling of the Court of Appeals

In its Decision[29] dated June 26, 2018, the CA denied the petition for review. While the CA agreed that the Chief of the Legal Affairs Services lacked legal standing, the appellate court did not find anything anomalous with the CSC's review of Claveria's appointment. Citing Section 12 (11),[30] Book V of

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[21] *Rollo*, p. 125.

[22] *Id*. at 130-152.

[23] *Id*. at 133.

[24] *Id*. at 133-136.

[25] *Id*. at 137.

[26] *Id*. at 139-140.

[27] *Id*. at 155-156.

[28] *Id*. at 160-182.

[29] *Supra* note 1.

[30] Section 12. *Powers and Functions*. — The Commission shall have the following powers and functions:

x x x x x x x x x

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal. Including contested appointments, and review decisions

Executive Order No. 292[31] and its implementing rules,[32] the CA held that the CSC had the power to recall any appointment by virtue of the CSC's power to "review decisions and actions of its agencies and of the agencies attached to it."[33]

Anent Claveria's eligibility, the CA sided with the CSC in finding Claveria's Fire Officer Eligibility insufficient to meet the required Career Service Professional Second Level Eligibility for the SI III position. The appellate court interpreted the Fire Officer Eligibility, stated under Item 4 of CSC Resolution No. 12-02190, to be applicable to uniformed personnel only. It quoted the CSC's findings, to wit:

> While the Commission allows the use of Fire Officer Eligibility, the same is permitted exclusively to appointment to second level tanks in the fire protection service and functionally related positions only. Let it be clarified that the phrase "functionally related positions" in the afore-quoted provision must be construed to refer to uniformed positions in the BFP, and does not extend to non-uniformed positions which specifically require a Career Service Professional Eligibility.[34]

Undaunted, Claveria filed the instant petition for review.[35] Claveria averred that the CSC-NCR's decision affirming her appointment as Special Investigator III became final and immutable. Hence, Atty. Pagdanganan's Letter dated June 2, 2015 should have been disregarded by the CSC because it was

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and actions of its offices and the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or ruling shall be liable for contempt of the Commission. Its decisions, orders or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof;

x x x x x x x x x

[31] Otherwise known as the Administrative Code of 1987.

[32] Particularly, Section 20, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service laws, which states:

[33] *Rollo*, p. 16.

[34] *Id.* at 18.

[35] *Id.* at 29-50.

filed beyond the 15-day reglementary period prescribed in Section 78,[36] Rule 16 of the Revised Rules on Administrative Cases in the Civil Service. The CSC erred in limiting the applicability of a Fire Officer Eligibility to uniformed positions in the BFP only. Claveria pointed out that the term "ranks" refer to items in the uniformed service while the term "positions" refer to items in the non-uniformed service. CSC Resolution No. 12-02190's statement that the Fire Officer Eligibility can be used for appointment to second level ranks in the fire protection service and functionally related positions would necessarily include an appointment to the non-uniformed position of a Special Investigator III. Otherwise, it would render the phrase "functionally related positions" inoperative and would discriminate against civilian employees of the BFP who are allowed to take the Fire Officer Examination.[37] In any case, Claveria asks for this Court's consideration similar to what this Court extended as she subsequently passed the Criminologist Licensure Examination held in June 2017.[38]

In a Comment[39] dated October 4, 2019, the CSC, through the Office of the Solicitor General, maintained that the petition

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[36] Section 78. Where and When to File. — Appointments invalidated or disapproved by the CSCFO may be appealed to the CSCRO while those invalidated or disapproved by the CSCRO may be appealed to the Commission within the fifteen (15) day reglementary period.
To facilitate prompt actions on invalidated or disapproved appointments, motions for reconsideration filed with the CSCFO shall be treated as an appeal to the CSCRO and a Motion for Reconsideration at the CSCRO will be treated as an appeal to the Commission and all the records thereof including the comments of the CSCFO or CSCRO shall, within ten (10) days from receipt of the latter, be forwarded to the CSCRO or the Commission as the case may be.
The action of the CSCRO concerned may be appealed to the Commission within fifteen (15) days from receipt thereof.
The appeal filed before the CSCROs and the Commission shall comply with the requirements for the perfection of an appeal enumerated in Sections 113 and 114.

[37] *Id*. at 41-43.

[38] *Id*. at 49.

[39] *Id*. at 228-239.

should be dismissed because the CA and CSC's factual findings are binding upon this Court.[40] Claveria's appointment was correctly disapproved despite any seeming finality of the CSC-NCR's decision because of the CSC's Constitutional mandate to determine the qualification and fitness of persons appointed to the civil service. The CSC maintained that Claveria's Fire Officer Eligibility does not comply with the Special Investigator III's required Career Service Professional Second Level Eligibility. Neither is the position of a Special Investigator III a functionally related position to a second level rank in the fire protection service. Following the principle of *ejusdem generis*, the phrase "functionally related positions" in CSC Resolution No. 12-02190 pertained to uniformed positions only and not to a non-uniformed position such as a Special Investigator III even if a Special Investigator III involves functions that may be related to that of second level ranks in the fire protection service.[41] Lastly, Claveria's subsequent passing acquisition of a Criminologist Eligibility cannot be used to cure the defect in her qualification for a Special Investigator III position because an appointee must possess the required qualifications at the date of the issuance of the appointment only.[42]

Ruling of the Court

The petition is meritorious.

The CSC and CA failed to appreciate the rule on eligibility under the Omnibus Rules Implementing Book V of Executive Order No. 292 (Omnibus Rules). More particularly, Section 3,[43] Rule III of the Omnibus Rules finds the eligibility resulting from civil service examinations requiring at least four years of

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[40] *Id*. at 231.

[41] *Id*. at 234-237.

[42] *Id*. at 238.

[43] Section 3. Eligibility resulting from civil service examinations which require less than four years of college studies shall be appropriate for appointment to positions in the first level, and that from examinations which require at least four years of college studies shall be appropriate for positions in the second level.

college studies appropriate for positions in the second level. The Fire Officer Examination is one such examination. Under CSC's Examination Announcement No. 6, s. 2012 (which was the applicable issuance at the time Claveria took her Fire Officer Examination), an examinee must have a baccalaureate degree — necessarily entailing four years of college studies. Therefore, Claveria's passing the Fire Officer Examination qualified her for the second level position of Special Investigator III. From this vantage point, Claveria's petition can already be granted. Nevertheless, the Court shall now lay to rest the issue of interpreting the phrase "functionally related positions" in relation to a Fire Officer Eligibility.

It is undisputed that the CSC, as the government's central personnel agency, is Constitutionally mandated to insure that all appointments in the civil service be made only according to merit and fitness to be determined by competitive examination.[44] Since the type of competitive examination an individual must take to enter into a second level career service position is unspecified, the CSC is given a wide latitude of discretion to determine the type of competitive examination with the end goal of promoting morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service.[45]

One of these competitive examinations is the Fire Officer Examination (FOE). Examinees who successfully hurdle the FOE, like Claveria, obtain a Fire Officer Eligibility — which is a second level eligibility "specific and appropriate for appointment to second level ranks in the fire protection service and functionally related positions only, except for ranks under the Philippine National Police."[46]

As against this legal backdrop, We are now tasked to determine whether the position of Special Investigator III is a functionally

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[44] Section 2 (2), Article IX-B, 1987 Constitution. *See also* Section 1, Chapter 1, Subtitle A, Title 1, Book V, Executive Order 292 or the Revised Administrative Code of 1987.

[45] CONSTITUTION, Section 3, Article IX-B.

[46] *Rollo*, p. 86.

related position to a second level rank in the fire protection service.

We rule in the affirmative.

The CSC insists that the Fire Officer Eligibility should only be limited to uniformed positions. Such interpretation would render the phrase "functionally related positions" inoperative since the second level ranks in the fire protection service already refer to uniformed positions — or those positions expressly enumerated in Republic Act No. (R.A.) 9263, otherwise known as the "Bureau of Fire Protection and Bureau of Jail Management and Penology Professionalization Act of 2004."

To avoid rendering the phrase *functus officio*, what is referred to when the law speaks of functionally related positions?

Since our laws do not specifically define what functionally related positions are, then the phrase "should be given [its] plain, ordinary, and common usage."[47] In the instant case, therefore, these would refer to positions which have duties and responsibilities that are connected to the duties and responsibilities of second level ranks in the fire protection service.

A comparison of the duties and responsibilities between a second level rank in the fire protection service and a Special Investigator III of the BFP shows the interrelatedness of both positions, to wit:

Second Level Ranks in the BFP	**Special Investigator III**
1. Fire Officer 3 — Responds to fire emergency call, assists in the logistics, x x x.	1. Conducts fire, arson investigation and re-investigation of fire incidents;
2. Senior Fire Officer (SFO) 1 — x x x assists in coordination of disasters and emergency incidents, acts as program coordinator during special	2. Conducts covert and overt intelligence coverage on all fire cases; 3. Participates in the preparation of special projects related to

[47] Agpalo (2009), Statutory Construction, p. 273, citing *Mustang Lumber, Inc. v. Court of Appeals*, 327 Phil. 214 (1996).

	events/programs, liaises with BFP logistics, x x x assist in collecting fire incident/ investigation report and assists in schedule duty personnel.		fire intelligence and investigation;
3.	SFO 2 — Conducts fire safety inspection, attends court hearing, drafts correspondence/reply/ communications, and assist in the investigation of all fire incidents.	4.	Cooperates in the immediate dispatching of fire intelligence and investigation operatives at fire scene to gather evidence and information;
4.	SFO 3 — x x x assist in the conduct of fire prevention education and performs custodian function.	5.	Protects and preserves the evidence gathered during fire incident for legal and other purposes;
5.	SFO 4 — x x x assists in the supervision of the station's daily operations, responds to fire/emergency call as driver/ operator, x x x drafts operations and activity report, draft case resolution. x x x	6.	Assists m the submission of initial intelligence and investigation report within 24 hours after fire occurrence and final report after gathering of evidence;
		7.	Collates fire incident reports from all stations nationwide which serve as basis for data/ information; and
		8.	Other related works.[48]

The functions of these offices are in harmony with the BFP's overall function of preventing and suppressing destructive fires and investigation of all causes of fires, as stated in Section 54 of R.A. 6975,[49] *viz.*:

Section 54. *Powers and Functions*. — The Fire Bureau shall be responsible for the prevention and suppression of all destructive fires on buildings, houses and other structures, forest, land transportation vehicles and equipment, ships or vessels docked at piers or wharves or anchored in major seaports, petroleum industry installations, plane crashes and other similar incidents, as well as the enforcement of the Fire Code and other related laws.

The Fire Bureau shall have the power to investigate all causes of fires and, if necessary, file the proper complaints with the city or provincial prosecutor who has jurisdiction over the case.

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[48] *CA rollo*, pp. 55-56.

[49] Otherwise known as the Department of the Interior and Local Government Act of 1990.

The CSC-NCR arrived at the same conclusion. According to the CSC-NCR, both second level positions and Special Investigator III work towards the accomplishment of BFP's mandate under Section 54 of R.A. 6975. While the CSC reversed this finding, it is worthy to note that the CSC likewise admitted that a Special Investigator III position "may involve functions which may be related to that of second level ranks in the fire protection service."[50] Its only reason for denying the use of Claveria's Fire Officer Eligibility to qualify for the Special Investigator III position is that a Special Investigator III position belongs to the non-uniformed position.

Without questioning the expertise of the CSC in creating qualification standards for the civil service, a Fire Officer Eligibility is more appropriate and relevant for the position of a Special Investigator III in the BFP. The topics covered by the Fire Officer Examination are more attuned to the duties and responsibilities of a Special Investigator III in the BFP *vis-à-vis* the general concepts covered by a career service professional/second level eligibility:

Fire Officer Examination Coverage	**Civil Service Professional/Second Level Examination Coverage**
General Ability (25%): Verbal, Analytical, Numerical Specialized Area (75%): *Fire Suppression (30%)* • Pre-Fire Planning • Firefighting Techniques and Procedures • Tools and Equipment and Apparatus *Fire Safety and Prevention (20%)* • Fire Code of the Philippines • Fire Safety Related Codes, NFPA Laws and other BFP issuances (Building Code, Electrical Code) • BFP Citizens Charter, SOP/	In English and Filipino: • Vocabulary; • Grammar and Correct Usage; • Organization of ideas; • Analysis/synthesis; • Word analogy; • Data interpretation; • Logic and abstract reasoning; and • Numerical reasoning. General information items on the following: • Philippine Constitution; • Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No.

[50] *Rollo*, p. 125.

MCs on Fire Safety Inspection *Fire Investigation (15%)* • The Law on Arson in the Philippines (RPC) o Constitutional Rights of the Accused o *Prima Facie* Evidence of Arson o Rules of Court • Procedures and Techniques o Identification, Preservation and Handling of Evidence o Other Related Procedure and Techniques • SOP's on Fire and Arson Investigation *Administrative Matters (10%)* • RA 6975 and its IRR • RA 9263 and its IRR • RA 9592 and its IRR • CSC Rules and Regulations and Qualification Standards • BFP Memo Circulars and SOP's on Administrative Matters[51]	6713); • Peace and Human Rights Issues and Concepts; and • Environment Management and Protection.[52]

Claveria's qualifications becomes glaringly adequate, if not ideal. Coupled with her hours of relevant experience and her prior service with the BFP (not to mention her subsequent attainment of her Criminology License), Claveria's personal qualifications meet the requirements of a Special Investigator III. Note that a Criminology License is sufficient to make the holder eligible to a second level position following paragraph 6,[53] Part V of the CSC's Revised Policies on Qualification Standards.

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[51] CSC Examination Announcement No. 06, s. 2012, *CA rollo*, p. 147.

[52] <https://government.com/civil-service-exam-coverage-pro-subpro/>. Last visited October 20, 2020.

[53] 6. Eligibilities resulting from bar/board examinations which require completion of a bachelor's degree shall be considered appropriate to positions

WHEREFORE, the Decision dated June 26, 2018 and the Resolution dated February 28, 2019 of the Court of Appeals in CA-G.R. SP No. 150189 are **REVERSED** and **SET ASIDE**. Decision No. 150101 dated March 6, 2015 of the Civil Service Commission-National Capital Region is hereby **REINSTATED**. The approval of petitioner Marilyn D. Claveria's permanent appointment as Special Investigator III of the Bureau of Fire Protection must be given.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

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for which the examinations were given, and to other first and second level positions not covered by bar/board/special laws and/or those that require other special eligibilities as may be determined by the Commission or those that require licenses such as those positions listed under Category IV of CSC MC 11, s. 1996 as amended.

Illustration

x x x x

- An RA 1080 (Criminology) eligibility shall be appropriate for appointment to Fingerprint Examiner, Police Officer or other first and second level positions not covered by bar/board laws.

FIRST DIVISION

[G.R. No. 245469. December 9, 2020]

HEIRS OF FEDELINA SESTOSO ESTELLA represented by VIRGILIA ESTELLA POLIQUIT, AMADEO ESTELLA, THELMA ESTELLA ALVARADO, NELITA ESTELLA SUMAMPONG, and REBECCA ESTELLA GUANCO represented by OMAR E. GUANGCO and MILANI E. GUANGCO, *Petitioners, v.* **JESUS MARLO O. ESTELLA, RAMIL O. ESTELLA, AMALIA O. ESTELLA and GLORIA O. ESTELLA,** *Respondents*.

APPEARANCES OF COUNSEL

Chariz M. Cabatingan for petitioners.
Villegas Law Office for respondents.

D E C I S I O N

CARANDANG, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated June 19, 2018 and the Resolution[3] dated January 21, 2019 of the Court of Appeals (CA) in CA-G.R. CEB CV No. 05971, which reversed the Decision[4] dated March 27, 2015 of the Regional Trial Court (RTC) of Argao, Cebu, Branch 26 in Civil Case No. AV-1220, a Complaint[5] for Declaration of Nullity of Dubious and Inofficious Deed of

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[1] *Rollo,* pp. 3-25.

[2] Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Marilyn B. Lagura-Yap and Gabriel T. Robeniol; *id.* at 43-60.

[3] *Id.* at 63-64.

[4] Penned by Judge Maximo A. Perez; *id.* at 66-72.

[5] *Id.* at 95-102.

Donation *Mortis Causa*, Partition and Damages filed by petitioners against respondents.

Facts of the Case

Petitioners Virgilia E. Poliquit, Amadeo Estella, Thelma E. Alvarado and Nelita E. Sumampong together with the late Rebecca E. Guanco and Lamberto S. Estella, are the children of the late Fedelina Sestoso Estella (Fedelina) who was the daughter of Julian Sestoso (Julian) and Epifania Fegarido (Epifania). Respondents Jesus Marlo O. Estella, Ramil O. Estella, Amalia O. Estella and Gloria O. Estella are the children of Lamberto S. Estella.[6]

Records show that on August 10, 1976, Julian executed an instrument denominated as "*Donacion Mortis Causa Kon Hatag Nga Pagabalihon Sa Akong Kamatayon*."[7] The document was written entirely in the Cebuano language and stated that Julian donated to his grandson, Lamberto S. Estella (Lamberto), three parcels of land all located in the town of Boljoon, Cebu. The instrument is written in two pages. The first page contains the disposition, signature and thumb mark of the donor, the signature of the donee, the signatures and the Attestation Clause of the three witnesses — Pablo Romero, Samuel Mendez and Julian Uraga, which attestation clause was continued on the second page, also signed by the three attesting witness and also bearing the thumbmark of Julian, the donor. In the attestation clause, it was stated that Julian signed the instrument in the presence of the three attesting witnesses and of Lamberto and that the witnesses witnessed and signed the instrument in the presence of Julian and Lamberto and of one another.[8]

The instrument was duly notarized by Municipal Judge and Notary Public *Ex-Officio* Vedasto R. Niere with the notarial acknowledgment appearing on the second page thereof, as well as the signatures of the three instrumental witnesses. In essence,

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[6] *Id.* at 5-6.

[7] *Id.* at 105-106.

[8] *Id.*

the instrument states that Julian's donation was made in consideration of his love, affection and gratitude for his grandson, Lamberto, who has been taking care of him since all of his children were already dead.[9]

Seven days later or on August 17, 1976, Julian died. Several years later, on May 13, 1990, Lamberto also died and is succeeded by his children-herein respondents. In the year 2000, the tax declarations covering the three parcels of land in the name of Julian were canceled and new tax declarations were issued in the name of the Heirs of Lamberto Estella, to wit: Tax Declaration (Dec.) Nos. 23112 and 00385 covering parcel one, Tax Dec. Nos. 23113 and 08082 covering parcel two and Tax Dec. Nos. 23116 and 06289 covering parcel three. The cancellation of the old tax declaration and the issuance of the new ones were based on the *Donacion Mortis Causa* executed by Julian.[10]

Aggrieved that Julian left all his properties to just one grandchild, herein petitioners, the brothers and sisters of Lamberto, filed a Complaint[11] for Declaration of Nullity of Dubious and Inofficious Deed of Donation *Mortis Causa*, Partition of Properties and Damages. They claimed that they are the children of Fedelina, who is the daughter of Julian and Epifania. They sought to declare the Deed of Donation *Mortis Causa* as null and void for being fraudulent and of dubious authenticity; the subject lots are the conjugal property of Julian and Epifania and are now co-owned by the heirs of their daughter Fedelina.[12]

Petitioners prayed for the following reliefs in their complaint: (1) that the Deed of Donation *Mortis Causa* be declared null and void and without legal force and effect for being fraudulent and of dubious authenticity unauthorized by the other co-owners of the subject properties and for being inofficious which

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[9] *Id.*

[10] *Id.* at 46.

[11] *Id.* at 95-102.

[12] *Id.* at 96-100.

prejudiced the legitime of compulsory heirs; (2) that the three lots be adjudged as co-owned by spouses Julian and Epifania; (3) that the three parcels of land be partitioned and distributed among the eight children and heirs of Fedelina, excluding Mario Estella who died without any issue; (4) that the Provincial Assessor Cebu be ordered to cancel Tax Dec. Nos. 23112 and 00385, Tax Dec. Nos. 23113 and 08082 and Tax Dec. Nos. 23116 and 06289 for being without legal basis; and (5) that respondents be ordered to pay petitioners reimbursement for attorney's fees in the amount of ₱50,000.00 and litigation expenses in the sum of ₱30,000.00 and to pay the costs.[13]

In their Answer,[14] respondents raised the following affirmative and special defenses, to wit: (1) not having been joined in lawful wedlock, Julian and Epifania were not spouses; (2) the real properties in question were inherited by Julian from his mother, and were not acquired during the purported marriage to Epifania; and (3) the execution of the deed of donation by Julian in favor of Lamberto is not tainted by any vice of consent or other irregularities.[15]

At the pre-trial, the issues were reduced to the following: (1) whether the deed of donation executed by Julian in favor of Lamberto on August 10, 1976 is valid; and (2) if the deed of donation is valid, whether the deed of donation is inofficious under Article 752 of the Civil Code.The issue that Julian and Epifania were not legal spouses was not anymore raised.[16]

During trial, Nelita Estella Sumampong testified that her parents, Fedelina and Dionesio Estella, had nine children, namely: Rebecca, Cesar, Virgilia, Mario, Amancio, Benedicto, Thelma, Nelita and Lamberto. Only six are living and three are already dead. Jesus, Mario and Ramil are the children of her elder brother, Lamberto Estella. Her mother died on February 22, 1975. That

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[13] *Id.* at 100-101.

[14] *Id.* at 123-125.

[15] *Id.* at 123-124.

[16] *Id.* at 47.

the three parcels of land involved in this case which are now in the name of Lamberto were acquired by Julian and his wife Epifania during their marriage but she does not know when Epifania died. She confirmed that based on Tax Declaration Nos. 01-1206690, 0898 and 01-1206690, the owner of the said properties is only Julian. She further stated that aside from the Baptismal Certificate of Fedelina showing that Julian and Epifania were married, she does not have a copy of the Marriage Certificate between Julian and Epifania.[17]

Respondent Jesus Marlo Estella testified that he is one of the defendants in this case. He knows petitioners Virgilia, Amadeo, Thelma, Nelita and Rebecca as they are the sisters of his father, Lamberto. Julian was his great grandfather, as his father Lamberto, is one of the children of Fedelina, Julian's daughter. He, at ten years of age, was present when his grandfather Julian executed a deed of donation over the three parcels of land in favor of his father, Lamberto. One month before his death on May 13, 1990, Lamberto turned over to him the original copy of the Deed of Donation. He claimed that the execution of the deed of donation by Julian in favor of Lamberto is not tainted with any vice of consent or other irregularities.[18]

Ruling of the Regional Trial Court

In a Decision[19] dated March 27, 2015, the RTC ruled in favor of petitioners and declared the Deed of Donation *Mortis Causa* executed by Julian in favor of Lamberto as null and void. The dispositive portion of the decision states, to wit:

> WHEREFORE, premises considered, a Decision is hereby rendered in favor of the plaintiffs and against the defendants by declaring, as follows:
>
> (1) The Deed of Donation Mortis Causa executed by Julian Sestoso on August 10, 1976 in favor of Lamberto Estella is hereby declared null and void;

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[17] *Id.* at 66-67.

[18] *Id.* at 67-68.

[19] *Supra* note 4.

(2) The following three (3) parcels of land covered by Tax Declaration No. 0112 00385, Tax Declaration No. 0112 08082 and Tax Declaration No. 0112 06289, all situated in Boljoon, Cebu, are hereby adjudged as conjugal partnership of gains of Spouses Julian Sestoso and Epifania Fegarido which became co-ownership properties of the following heirs of their daughter Fedelina Sestoso de Estella: Rebecca, Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo and Nelita, all surnamed Estella; and

(3) The Provincial Assessor of Cebu is directed to cancel Tax Declaration Nos. 23112, 00385, 23117, 08082, 23116 and 06289, all covering parcels of land in Boljoon, Cebu, within thirty (30) days from the finality of this Decision.

SO ORDERED.[20]

In nullifying the Deed of Donation *Mortis Causa*, the trial court held that the attestation clause of the document does not state the number of pages used upon which the will is written. For failure to comply with the formalities prescribed by law for the validity of wills, the donation was declared void and produced no effect. The trial court further ruled that the three parcels of land are part of the conjugal partnership of gains of Julian and Epifania and therefore became co-owned properties of the heirs of their daughter Fedelina, namely: Rebecca, Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo and Nelita, all surnamed Estella, excluding Mario Estella who died without any issue. Hence, the trial court ruled that the parcels of land should be partitioned among the aforementioned eight children of Fedelina. The trial court also directed the Provincial Assessor of Cebu to cancel Tax Dec. Nos. 23112, 00385, 23113, 08082, 23116, and 06289 issued in the name of the heirs of Lamberto.[21]

Respondents moved for reconsideration[22] but was denied by the RTC in an Order[23] dated August 14, 2015.

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[20] *Rollo*, p. 72.

[21] *Id.* at 71.

[22] *Id.* at 73-82.

[23] *Id.* at 153.

Hence, respondents filed an appeal[24] before the CA. They claimed that the RTC erred in ruling that the donation *mortis causa* executed by Julian was null and void.[25]

Ruling of the Court of Appeals

On June 19, 2018, the CA issued a Decision[26] granting the appeal and reversing the decision of the trial court. The decretal portion of which states:

> WHEREFORE, the appeal is GRANTED. The Decision dated March 27, 2015 rendered by the Regional Trial Court of Argao, Cebu, Branch 26 in Civil Case No. AV-1220 is REVERSED. Accordingly, the Complaint in Civil Case No. AV-1220 is ordered dismissed.
>
> SO ORDERED.[27] (Emphasis omitted)

The CA found that Julian's bequest in favor of his grandson Lamberto was a donation *inter vivos* despite its title and designation, due to the following reasons: (1) it does not impose any condition that the title or ownership to the three parcels of land shall only be transferred after the death of the donor; (2) there is nothing in the instrument which states that the donor intends to retain ownership of the three parcels of land while still alive; (3) neither did the donor impose as condition that the transfer should be revocable before the donor's death, as in fact, the instrument itself contains the written acceptance of the donee, Lamberto; and (4) the instrument does not contain a provision that the transfer shall be void if the donor should survive the donee.[28]

The CA added that even if the court were to declare Julian's bequest to be a true donation *mortis causa*, its validity would still be upheld since it substantially complied with the formalities

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[24] *Id.* at 156.

[25] *Id.*

[26] *Supra* note 2.

[27] *Rollo*, p. 60.

[28] *Id.* at 53-54.

required in the execution of a will. The appellate court further held while the attestation clause does not state the number of sheets or pages upon which the will is written, however, the last part of the body of the will contains a statement that indicates the number of pages upon which the will was written as exception to the rigid requirements in the execution of wills.[29]

Petitioner's Arguments

Hence, petitioners filed the present petition. Petitioners assert that the donation executed by Julian is a donation *mortis causa*, not a donation *inter vivos* since the donation is to be effective only upon the death of Julian and the transfer of ownership of the three parcels of land will pass to Lamberto only upon the death of Julian. Petitioners also argued that the donation is void for failure to comply with the requirements for the validity of its execution particularly on the attestation clause and that it is inofficious since it prejudiced the legitime of petitioners.[30]

Specifically, petitioners claim that the CA did not rule in accordance with the prevailing law and jurisprudence when: (1) it ruled that the *Donacion Mortis Causa Kon Hatag nga Pagabalhinon sa Akong Kamatayon* is a donation *inter vivos* despite its juridical nature of passing title to Lamberto only upon Julian's death;[31] (2) it validated the *Donacion Mortis Causa Kon Hatag nga Pagabalhinon sa Akong Kamatayon* as a donation *inter vivos* despite the lack of acceptance by the purported donee and the reservation by the donor of sufficient means to support himself;[32] (3) it discounted the marriage and co-ownership between Julian and Epifania;[33] and (4) when it dismissed the complaint in Civil Case No. AV-1220 without regard to petitioners' assertion that the donation made by Julian

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[29] *Id.* at 55-58.

[30] *Id.* at 14-20.

[31] *Id.* at 12.

[32] *Id.* at 20.

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

to Lamberto was inofficious because it prejudiced the legitime of the petitioners.[34]

Respondent's Comment

In their Comment,[35] respondents maintain that the CA was correct in holding that the instrument was a donation *inter vivos* because it does not impose any condition that the title or ownership to the three parcels of land shall only be transferred after the death of the donor; there is nothing in the instrument which states that the donor intends to retain ownership of the three parcels of land while still alive; neither did not the donor impose as condition that the transfer should be revocable before the donor's death; and that the instrument does not contain a provision that the transfer shall be void if the donor should survive the donee.[36] Respondents also aver that the CA did not err when it reversed the ruling of the RTC and upheld the validity of the donation in favor of Lamberto.[37]

Issues

The issues raised in this petition boil down to two primordial issues, to wit: (1) whether the *Donacion Mortis Causa Kon Hatag nga Pagabalhinon sa akong Kamatayon* is a donation *mortis causa* or a donation *inter vivos*; and (2) whether the donation is inofficious.

Ruling of the Court

The petition is partly meritorious.

First, We determine whether the *Donacion Mortis Causa Kon Hatag nga Pagabalihon sa akong Kamatayon*[38] executed by Julian in favor of his grandson, Lamberto, is a donacion *mortis causa* as ruled by the trial court or a donation *inter vivos*

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[34] *Id.* at 20.

[35] *Id.* at 220-231.

[36] *Id.* at 223.

[37] *Id.* at 227.

[38] *Id.* at 105-106.

as held by the appellate court. The distinction between a transfer *inter vivos* and *mortis causa* is important as the validity or revocation of the donation depends upon its nature.

For reference, the pertinent portion of the deed is hereby quoted:

> *Nga ako, JULIAN V. SESTOSO, 76 katuig ang panuigon, balo, us aka Filipino ug molupyo sa Poblacion, lungsod sa Boljoon, lalawigas sa Sugbu, Filipinas, hingpit pa ang kabuto ug igong salabutan, pinaagi ning maong kalig-onan akong ipahayag nga samtang ang akong mga anak pulos patay na ug walay laing naggalam kanako kon dili ang akong apo nga si LAMBERTO S. ESTELLA, 38 katuig ang panuigon, minyo kang Bienvenida Olmillo, akong ibilin ug ihatag samong (sa maong) LAMBERTO S. ESTELLA ug sa iyang mga somosonod ang akong mga kabtangan, yuta ug balay nga mao kining mosonod*:
>
> x x x x x x x x x[39]

An assiduous review of the subject instrument would show that the deed executed by Julian is a donation *mortis causa*. In a donation *mortis causa*, the right of disposition is not transferred to the donee while the donor is still alive. The following ruling of the Court in *Alejandro v. Judge Geraldez*[40] is illuminating:

> If the donation is made in contemplation of the donor's death, meaning that the full or naked ownership of the donated properties will pass to the donee only because of the donor's death, then it is at that time that the donation takes effect, and it is a donation mortis causa which should be embodied in a last will and testament.
>
> But if the donation takes effect during the donor's lifetime, or independently of the donor's death, meaning that the full or naked ownership (nuda proprietas) of the donated properties passes to the donee during the donor's lifetime, not by reason of his death but because of the deed of donation, then the donation is *inter vivos*.[41]

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[39] *Id.* at 105.

[40] 168 Phil. 404 (1977).

[41] *Id.* at 415-416.

Donation *inter vivos* differs from donation *mortis causa* in that in donation *inter vivos*, the donation takes effect during the donor's lifetime or independently of the donor's death and must be executed and accepted with the formalities prescribed by Articles 748 and 749 of the Civil Code.However, if the donation is made in contemplation of the donor's death, meaning that full or naked ownership will pass to the donee only upon the donor's death, then, it is a donation *mortis causa*, which should be embodied in a last will and testament.[42]

Notably, the phrase in the title *"Kon Hatag Nga Pagabalihon Sa Akong Kamatayon"* literally means "Donation or gift that will be transferred upon my death." In their Comment,[43] respondents do not refute that the phrase *"hatag nga pagabalihon sa akong kamatayon"* when translated means "transferred upon my death."[44] This only means that Julian intended to transfer the ownership of the subject properties to Lamberto upon his death and not during his lifetime. The CA erroneously interpreted the phrase *"ibilin and ihatag"* as "*to leave and give now*," (present tense)[45] since such phrase may also be interpreted to mean *"to leave and give"* (future tense). What must be taken into consideration are the circumstances surrounding its execution and the clear intention of Julian. The phrase "upon my death" clearly confirms the nature of the donation as *mortis causa*. It is evident that the donation was made to take effect after the death of Julian and not during his lifetime. Moreover, contrary to the findings of the CA, the donation has no acceptance clause. The phrase, *"Ako, si Lamberto S. Estella, ang maong nahasulat sa itaas* ***magpasalamat*** *ako ug dako"*[46] when translated means that Lamberto is grateful to his grandfather, and there was no express statement of acceptance.

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[42] *Id.* at 415.

[43] *Rollo*, pp. 220-231.

[44] *Id.* at 227.

[45] *Supra* note 2 at 53.

[46] Acceptance Clause of *Donacion Mortis Causa Kon Hatag Nga Pagabilihon Sa Akong Kamatayon*; *rollo*, p. 91.

Considering that the subject instrument is a donation *mortis causa*, the same partake of the nature of testamentary provisions and as such, said instrument must be executed in accordance with the requisites on solemnities of wills and testaments under Articles 805 and 806 of the Civil Code, to wit:

> Article 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.**
>
> If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.
>
> Article 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. (Emphasis supplied)

In the present case, the trial court ruled that the donation of Julian to Lamberto was in the nature of a donation *mortis causa* but since it failed to comply with the formalities prescribed by law for the validity of wills, the donation is void.[47] On the contrary, We find that the donation *mortis causa* has substantially complied with the formalities required by law for the validity of a will.

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[47] *Supra* note 4 at 70.

Under Articles 805 and 806 of the Civil Code, the requirements for the validity of a will are as follows: (1) subscribed by the testator or his agent in his presence and by his express direction at the end thereof, in the presence of the witnesses; (2) attested and subscribed by at least three credible witnesses in the presence of the testator and of one another; (3) the testator, or his agent, must sign every page, except the last, on the left margin in the presence of the witnesses; (4) the witnesses must sign every page, except the last, on the left margin in the presence of the testator and of one another; (5) all pages numbered correlatively in letters on the upper part of each page; (6) attestation clause, stating: (a) the number of pages of the will; (b) the fact that the testator or his agent under his express direction signed the will and every page thereof, in the presence of the witnesses; and (c) the fact that the witnesses witnessed and signed the will and every page thereof in the presence of the testator and one another; and (7) acknowledgment before a notary public.[48]

All these requirements have been followed and complied with in the execution of the donation *mortis causa*, except the number of pages of the will. The first page contains the disposition, signature and thumb mark of Julian, the testator, the signatures and the Attestation Clause of the three witnesses — Pablo Romero, Samuel Mendez and Julian Uraga — which attestation clause was continued on the second page, also signed by the three attesting witness and also bearing the thumbmark of Julian, the testator. In the attestation clause, it was stated that Julian signed the instrument in the presence of the three attesting witnesses and of Lamberto and that the witnesses witnessed and signed the instrument in the presence of Julian and Lamberto and of one another.[49] The petitioners did not raise as issue the compliance of these requirements for the validity of a will. Although a further examination of the document in question reveals that the attestation clause indeed failed to state the number of pages upon which the will is written, however,

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[48] *See Jottings and Jurisprudence in Civil Law*; Balane, Succession, 2016 Ed., pp. 64-65.

[49] *Donacion Mortis Causa Kon Hatag Nga Pagabilihon*; *rollo*, pp. 91-92.

the number of pages was stated in one portion of the donation *mortis causa*, particularly the notarial acknowledgment of Judge Vedasto Niere wherein it was specified that the instrument is composed of two pages, the Acknowledgment included. In the case of *Mitra v. Sablan-Guevarra*,[50] the Court upheld the validity of the instrument even though there was omission of the number of pages in the attestation clause, since such was supplied by the Acknowledgment portion of the will itself without the need to resort to extrinsic evidence.[51] Applying the same ruling to this case, We find that the questioned instrument substantially complied with the formal requirements of a donation *mortis causa*.

Nevertheless, even if We find that the questioned *"Donacion Mortis Causa Kon Hatag Nga Pagabalihon Sa Akong Kamatayon"* substantially complied with the formal requirements for the validity of a donation *mortis causa*, We find merit in petitioners' contention that it was inofficious. A donation is inofficious if it impairs the legitime of compulsory heirs. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.[52] Article 887 of the New Civil Code enumerates the compulsory heirs whose legitime must not be impaired, thus:

Article 887. The following are compulsory heirs:
(1) **Legitimate children and descendants, with respect to their legitimate parents and ascendants**;
(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
(3) The widow or widower;
(4) Acknowledged natural children, and natural children by legal fiction;

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[50] 830 Phil. 277 (2018).

[51] *Id.* at 288.

[52] Article 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

(5) Other illegitimate children referred to in Art. 287.
x x x (Emphasis supplied)

Corollary thereto, Article 888 of the Civil Code provides that:

Article 888. The legitime of legitimate children and descendants consists of **one-half the hereditary estate** of the father and of the mother.

The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided. (Emphasis supplied)

Epifania predeceased Julian. When Julian died on August 17, 1976, he was survived by his grandchildren, namely, Rebecca, Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo, Nelita, and Mario Estella. His only daughter, Fedelina, predeceased him and had died in 1975.[53] Under the second paragraph of Article 856 of the Civil Code,[54] a compulsory heir who dies before the testator, shall transmit no right to his own heirs except in cases expressly provided. The exception referred to is the right of representation. Consequently, the right to the legitime is transmitted to the representatives of the compulsory heirs. Hence, Fedelina's right to the legitime of Julian's properties is transmitted to her children who shall inherit from Julian, by right of representation.

Under the present law, the legitime of legitimate children and descendants consists of one-half of the hereditary estate of their legitimate parents or ascendants, while the other half is at the latter's disposal. This half for free disposal may be given by the testator to his legitimate children or descendants or to any other person not disqualified by law to inherit from him, subject to the rights of the surviving spouses and illegitimate children. Hence, based on the foregoing, Julian is only allowed to freely dispose one-half of his estate and give it to Lamberto.

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[53] *Rollo*, pp. 66-67.

[54] Article 856. x x x
A compulsory heir who dies before the testator, a person incapacitated to succeed, and one who renounces the inheritance, shall transmit no right to his own heirs except in cases expressly provided for in this Code.

The remaining half is the legitime of his legitimate children and descendants which he cannot freely dispose. Since the donation *mortis causa* of the three properties of Julian impaired the legitime of petitioners who are legitimate descendants of Julian, the same must be reduced.

Article 907 of the Civil Codes states that "***[t]estamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive***." Evidently, if the testator disposed of his estate in a manner that impaired or diminished the legitime of compulsory heirs, the latter may petition to demand that those dispositions be reduced or abated to the extent that they may be inofficious or excessive. Herein petitioners, who are legitimate descendants of Julian, being the children of his daughter Fedelina, are compulsory heirs of Julian and are entitled to the one-half portion of his estate.

Consequently, the Donation *Mortis Causa* executed by Julian in favor of Lamberto should be reduced insofar as the one-half portion of the three parcels of land, which prejudiced the legitime of Julian's legitimate descendants. The said one-half portion shall pertain to the eight children of Fedelina, namely: Rebecca, Cesar, Lamberto, Benedicta, Thelma, Virgilia, Amadeo and Nelita, excluding Mario who has died without any issue. The donation of the one-half of the three parcels of land made by Julian in favor of Lamberto remains a valid and lawful disposition of Julian's free portion of his property which he can freely dispose of. However, since Lamberto is also a compulsory heir entitled to one-eighth of the one-half portion which represents the legitime of the compulsory heirs, the deed of donation *mortis causa* shall be reduced only insofar as the seven-eighth of the one-half of the three parcels of land previously owned by Julian and the respondents are hereby ordered to reconvey the said portion to petitioners.

Hence, petitioners and respondents are directed to conduct a partition of the three subject properties in accordance with the aforementioned sharing of Julian's properties, with petitioners owning **7/8 of the ½ (or 7/16 of the whole)** of each of the three parcels of land while respondents own the **other half** of

the three parcel of land and an additional **1/8 portion of the other ½ (or a total of 9/16 of the whole)** of the three parcels of land, as Lamberto's share in the legitime. The Provincial Assessor of Cebu is hereby ordered to cancel the issuance of Tax Dec. Nos. 23112 and 00385, Tax Dec. Nos. 23113 and 08082 and Tax Dec. Nos. 23116 and 06289 in the names of the heirs of Lamberto. The parties can partition these parcels of land, voluntarily or judicially.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated June 19, 2018 and the Resolution dated January 21, 2019 of the Court of Appeals in CA-G.R. CEB CV No. 05971 are **MODIFIED**. The *Donacion Mortis Causa Kon Hatag Nga Pagabalhinon sa Akong Kamatayon* executed by Julian Sestoso in favor of Lamberto Estella is declared **VALID** as to the one-half (½) free portion of Julian's properties. The disposition of the other one-half (½) of the estate of decedent Julian Sestoso which impaired the legitime of his compulsory heirs, namely, Rebecca, Cesar, Benedicta, Thelma, Virgilia, Amadeo, and Nelita, all surnamed Estella, who inherited from him by right of representation, is declared **INOFFICIOUS**.

Respondents Jesus Marlo O. Estella, Ramil O. Estella, Amalia O. Estella, and Gloria O. Estella are **ORDERED** to reconvey to petitioners seven-eighths (7/8) portion of the one-half (or 7/16 of the whole) of the three parcels of land donated by Julian Sestoso to Lamberto Estella. The parties are likewise **ORDERED** to conduct a partition of the three properties to determine the portion pertaining to Rebecca, Cesar, Benedicta, Thelma, Virgilia, Amadeo, and Nelita, all surnamed Estella and the portion pertaining to respondents.

The Provincial Assessor of Cebu is hereby **ORDERED** to cancel Tax Declaration Nos. 23112 and 00385, Tax Declaration Nos. 23113 and 08082, and Tax Declaration Nos. 23116 and 06289 in the names of the heirs of Lamberto Estella. The parties can partition the three parcels of land voluntarily or judicially.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

EN BANC

[G.R. No. 245830. December 9, 2020]

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION represented by IRENE J. BESIDO-GARCIA, in her capacity as President and Chief Executive Officer (CEO), the OFFICERS and EMPLOYEES of PSALM listed in the Notice of Disallowance No. 10-003-(2009), *Petitioners, v.* **COMMISSION ON AUDIT,** *Respondent.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

ZALAMEDA, *J.*:

Attempts to circumvent a law that requires certain conditions to be met before granting benefits demonstrates malice and gross negligence amounting to bad faith on the part of the government corporation's officers, who are well aware of such law.

The Case

In this petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court, petitioners seek the reversal of Decision No. 2015-085[1] dated 26 March 2015 of the Commission on Audit (COA), which affirmed the Notice of Disallowance (ND) No. 10-003-(2009) dated 15 June 2010 issued against the grant of Corporate Performance Based Incentive (CPBI) to officials and employees of the Power Sector Assets and Liabilities Management Corporation (PSALM) in the total amount of

[1] *Rollo*, pp. 126-129; by Commissioners Heidi L. Mendoza and Jose A. Fabia.

Php56,604,286.37. Petitioners also ask the Court to review Decision No. 2018-301[2] dated 15 March 2018, which partially granted petitioners' motion for reconsideration, and excluded some of the approving and certifying officers from solidary liability but held them liable as payees.

Antecedents

On 13 March 2002, pursuant to Republic Act No. (RA) 9136, the Office of the President, through the Department of Budget and Management (DBM), approved a Uniform Compensation Plan (UCP) for three (3) corporations, namely: the National Power Corporation; the National Transmission Commission; and PSALM. Subsequently, on 21 June 2007, these corporations requested the DBM's approval over a proposed Harmonized Power Sector Compensation Plan to increase the salary of their officials and employees pursuant to the UCP.[3] The DBM denied their request. However, the DBM recommended that they may, instead, devise an equitable performance-based incentive package in lieu of the salary increase under their proposed harmonized compensation plan.[4]

Starting calendar year (CY) 2008, the respective Board of Directors of the three (3) aforementioned corporations agreed to base their proposed CPBI on a Corporate Action Plan and a Corporate Performance Matrix providing for a framework for assessing their corporate accomplishments.[5] Pursuant to the said action plan, PSALM's Board of Directors approved Resolution No. 2009-1016-001 dated 16 October 2009[6] establishing its Corporate Action Plan, Corporate Performance Metrics and Corporate Strategic Plan (CAP/CPM/CSP).

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[2] *Id*. at 149-157; by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia.

[3] *Id*. at 150.

[4] *Id*. at 48.

[5] *Id*. at 150.

[6] *Id*. at 51-55.

On 15 December 2009, or two (2) months after coming up with PSALM's CAP/CPM/CSP, its Board of Directors approved Resolution No. 2009-1215-006 granting an across-the-board CPBI equivalent to five and a half (5 1/2) months of basic pay, net of tax, in the total amount of Php56,604,286.37,[7] to wit:

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED that, as recommended by PSALM Management and as endorsed by the Board Review Committee (BRC), the Board, in recognition of the corporate accomplishments and the efforts of PSALM officers and employees, hereby approves and confirms the following:

1. The grant of an across-the-board performance-based incentive, equivalent to five and one-half (5.5) months of basic pay net of tax to be released on a staggered basis as follows:

Proposed Release of Incentive	Equivalent Monthly Basic Pay Net of Tax
By 15 December 2009	4 months
After validation of an outstanding performance in the 2009 Corporate Performance Assessment Report by the Internal Audit Department	1.5 months

2. Authority for the PSALM President and CEO to release the performance-based incentive for 2009 equivalent to five and one-half (5.5) months of basic pay net of tax following the above schedule, and

3. Authority for the PSALM President and CEO to sign and execute any and all documents to effect the foregoing resolution.

APPROVED AND CONFIRMED this 15th day of December 2009.[8]

According to PSALM, it granted the above benefit based on its accomplishments for CY 2009, which have apparently surpassed their targets for the year. Some of these achievements

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[7] *Id*. at 56-64.

[8] *Id*. at 63-64.

include the privatization of the Limay plant, the turn-over of six (6) additional plants, rates adjustment, attainment of ISO certification, successful execution of an Operation and Maintenance Agreement with NPC, increase in privatization proceeds, and filing of recovery of Stranded Contract Costs and Stranded Debts.[9]

However, the COA Audit Team Leader assigned to PSALM issued the assailed ND No. 10-003-(2009)[10] disallowing the above disbursement for being illegal and excessive. The expenditure was found to contravene Section 64[11] of RA 9136[12] otherwise known as the *Electric Power Industry Reform Act of 2001* or the EPIRA Law, which requires prior presidential approval before granting emoluments and benefits to officials and employees of PSALM. The disbursement also violated Section 3 (b) and (c)[13] of Administrative Order No. 103 dated

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[9] *Id*. at 62-63.

[10] *Id*. at 65-72.

[11] SECTION 64. Fiscal Prudence. — To promote the prudent management of government resources, the creation of new positions and the levels of or increases in salaries and all other emoluments and benefits of TRANSCO and PSALM Corp. personnel shall be subject to the approval of the President of the Philippines. The compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.

[12] Republic Act No. 9136, 08 June 2001.

[13] SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x x x x x x

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance.

(c) For other non-full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans; and (ii) in the case of those receiving per diems, honoraria and other fringe benefits

31 August 2004,[14] mandating the suspension of the grant of new or additional benefits to full-time officials and employees, except for Collective Negotiation Agreement (CNA) Incentives.

With respect to its excessiveness, the grant of CPBI equivalent to five and one-half (5 ½) months of basic salary was considered unreasonably high and beyond just measure or amount under COA Circular 85-55A[15] dated 08 September 1985.[16]

The following persons were determined to be liable for the transaction:

Name	Position/Designation	Nature of Participation in the Transaction
Jose C. Ibazeta Dorothy M. Calimag	President and CEO Manager, Human Resources and General Services Department	For certifying that the charges to budget are necessary, lawful and under her *(sic)* direct supervision and that supporting documents are valid, proper and legal.
Alvin P. Diaz	Manager, Financial Services Department	For certifying that funds are available and earmarked/utilized for the purpose indicated.
Maria M. Bautista	Manager, General Accounting Division	For certifying that supporting documents are complete and proper.

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in excess of Twenty Thousand Pesos (P20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (P20,000.00) per month.

[14] Continued Adoption of Austerity Measures in the Government, Administrative Order No. 103, 31 August 2004.

[15] 3.3 "EXCESSIVE" EXPENDITURES

Definition: The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

[16] *Rollo*, pp. 69-70.

Jose C. Ibazeta Dorothy M. Calimag	President and CEO Manager, Human Resources and General Services Department	For approving the payments of the CPBI.
Lourdes S. Alzona Manuel Marcos M. Villalon II Yolanda D. Alfafara Maria M. Bautista Amelita G. Zarate Marivi V. Francisco Jose C. Ibazeta	Vice President, Finance Manager, Treasury Department Manager, Controllership Department Manager, General Accounting Division Manager, Corporate Fund Management Division Sr. Finance Specialist, GAD President and CEO	For directing the Development Bank of the Philippines to credit the amount relative to the CPBI to each individual PSALM employees['] and officers['] bank account. For approving PSALM Memorandum Order No. 09-21 dated 16 December 2009 (Guidelines on the grant of the 2009 CPBI)
Board of Directors	PSALM Board of Directors	For signing/approving Board Resolution No. 2009-1215-006 datd 15 DEcember 2009
All Payees	PSALM Officers and Employees	For receiving the 2009 CPBI.[17]

On appeal, the COA Corporate Government Sector (CGS)-Cluster B issued Decision No. 2011-015 dated 20 December 2011[18] affirming the disallowance of PSALM's CPBI for CY 2009. It ruled the issuance of the ND without a prior Audit Observation Memorandum (AOM) did not deprive PSALM management of due process. The audit of the 2009 CPBI was a continuation of the audit of the 2008 CPBI in which an AOM, followed by a Notice of Suspension and an ND, was issued. In fact, an ND may be issued by the audit team leader outright.

COA CGS-Cluster B also concurred with the finding that the subject transaction was excessive. An analysis of PSALM's financial statements shows that income from financial

[17] *Id*. at 70.

[18] *Id*. at 73-78.

operations, after financial expenses, reflects a negative of Php3.235 billion. PSALM also had deficient funds to meet its obligations. Finally, the disbursement did not carry the approval of the President as required by law. The confidential document dated 30 December 2009 submitted by PSALM purporting to bear the Office of the President's approval of the grant of CPBI, is insufficient to override the ND. The said document did not bear the signature of President Gloria Macapagal Arroyo and was not among the records available on file or in the possession of the OP. Thus, the authenticity of the document cannot be given weight.[19]

Decision of the COA Proper

Petitioners filed a petition for review before the COA Proper, which initially denied the same in its Decision No. 2015-085 dated 26 March 2015[20] for failure of petitioners to appeal within the reglementary period of six (6) months or 180 days counted from their receipt of the assailed ND, hence:

> **WHEREFORE**, premises considered, the petition for review of Power Sector Assets and Liabilities Management Corporation is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission on Audit Corporate Government Sector-Cluster B Decision No. 2011-015 dated December 20, 2011, affirming Notice of Disallowance (ND) No. 10-003-(2009) dated June 15, 2010, on the payment of the 2009 corporate performance-based incentive to the officials and employees of PSALM in the total amount of ₱56,604,286.37, is final and executory.[21]

Upon petitioners' motion for reconsideration, the COA Proper, through its Decision No. 2018-301 dated 15 March 2018,[22] affirmed the disallowance, with the modification of excusing certain officers from liability, thus:

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[19] *Id*. at 75-78.

[20] *Id*. at 126-129.

[21] *Id*. at 128.

[22] *Id*. at 149-158.

WHEREFORE, premises considered, the Motion for Reconsideration of Power Sector Assets and Liabilities Management Corporation (PSALM), its officers and employees, through counsels, of Commission on Audit (COA) Decision No. 2015-085 dated March 26, 2015, is hereby **PARTIALLY GRANTED**. Accordingly, COA CGS-Cluster B Decision No. 2011-015 dated December 20, 2011, and Notice of Disallowance (ND) No. 10-003-(2009) dated June 15, 2010, on the grant of Corporate Performance-Based Incentive to PSALM officials and employees for calendar year 2009, in the total amount of ₱56,604,286.37 is **AFFIRMED with MODIFICATION**. All PSALM officials and employees named liable under the ND shall remain liable, except for Mr. Alvin P. Diaz, Ms. Lourdes S. Alzona, Mr. Manuel Marcos M. Villalon II, Ms. Yolanda D. Alfafara, Ms. Amelita G. Zarate, Ms. Marivi V. Francisco, and Ms. Maria M. Bautista who are excluded from liability as approving/certifying officers but shall continue to be liable as payees up to the amount they actually received.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.[23]

The COA Proper explained that the issuance of an AOM is not a pre-requisite for the issuance of an ND. Petitioners were afforded the opportunity to defend themselves in their appeals disproving the denial of due process. Moreover, the disallowance was justified for lack of Presidential approval and for being excessive considering PSALM had a negative actual income for CY 2009.

The officers and employees of PSALM likewise could not claim good faith since at the time the CPBI for CY 2009 was granted, the audit team had already issued an AOM and an ND disallowing the same kind of benefit, more specifically the CPBI for CY 2008. The COA Proper, nevertheless, excused from liability some of the approving and certifying officers, who merely performed ministerial functions when they signed the pertinent documents for the subject disbursement. Nonetheless,

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[23] *Id*. at 157.

these officers were still held liable as payees up to the amount they received.[24]

Issues

Petitioners now come before this Court and raise the following as grounds to question the COA's decision:

A. The constitutional right of petitioners to due process of law was violated when the ND No. 10003-(2009) was hastily issued by the Audit Team Leader without giving them prior information of the alleged questionable transaction (grant of 2009 CPBI) and without affording them the opportunity to explain the transaction subject of disallowance.

B. The grant of 2009 CPBI to petitioners is not excessive on the ground that the 2009 CPBI is an equitable performance-based incentive package that was formulated, validated and approved by the PSALM BOD in its Resolution No. 2009-1215-006 dated December 15, 2009 and justified by the totality of the achievements of PSALM.

C. CPBI is a reward or financial incentive and not a benefit, hence it is not covered by the requirements of approval by the Office of the President under Section 64 of RA 9136 and the grant of 2009 CBPI cannot be considered as "unnecessary expense" within the meaning and contemplation of COA Circular No. 85-55-A.

D. PSALM officials who authorized its disbursements upon the authority of the PSALM Board and the officials and employees who received the incentive in good faith in the honest belief that the same were due them under the law as approved by the President of the Philippines, confident that they deserve such incentive are entitled to the presumption of good faith.[25]

Respondent, through the Office of the Solicitor General, argues the petition for *certiorari* should be dismissed because it was filed without the requisite imprimatur of its statutory counsel, the Office of the Government Corporate Counsel (OGCC). Petitioners also failed to comply with procedural requirements

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[24] *Id*. at 153-156.

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

on attachments and timeliness when it filed its appeal before the COA. They were afforded due process in this case since an AOM is not a pre-requisite to the issuance of an ND. Even more important, the grant of the CPBI to PSALM personnel was not approved by the President and is clearly excessive. Lastly, petitioners' defense of good faith is unavailing given their patent disregard of the law.[26]

Ruling of the Court

The petition lacks merit. Initially, We will discuss the procedural issues raised by both parties.

The OGCC gave its approval for the filing of the present case

The OGCC was designated as the principal law office for Government Owned and Controlled Corporations (GOCCs) under Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987,[27] which states:

> SECTION 10. *Office of the Government Corporate Counsel*. — The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.
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Accordingly, Section 1, Rule 5 of the OGCC Rules and Regulations[28] states that the OGCC shall handle all cases

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[26] *Id*. at 200-220.

[27] Executive Order No. 292, 25 July 1987.

[28] Rules Governing the Exercise by the OGCC of its Authority, Duties and Powers as Principal Law Office of All GOCCs OGCC Rules and Regulations (2012).

involving GOCCs unless their respective legal departments are duly authorized or deputized, or when the engagement of a private lawyer has been authorized in accordance with the rules.

The present petition involving PSALM, a GOCC created pursuant to Section 49[29] of the EPIRA Law, should be prosecuted and supervised by the OGCC. At the very least, the OGCC should have duly authorized or deputized the legal department of PSALM to handle the same.

In *Land Bank of the Phils. v. Spouses Amagan*,[30] the Court ruled the entry of appearance by the OGCC and its subsequent filing of pleadings, while submitting Letters of Authority earlier issued to authorize Land Bank's lawyers to handle the case, unequivocally demonstrated the OGCC's control and supervision over the actions of Land Bank's Legal Services Group, and its approval of the actions already undertaken by the latter.

Similarly, in this case, the OGCC entered its appearance,[31] submitted an authority letter dated 18 June 2019[32] in favor of PSALM's in-house lawyers authorizing them to appear as counsel, and filed a Reply[33] on behalf of PSALM. With this premise, the Court equally rules that the current suit is being litigated by the OGCC, PSALM's principal counsel. Respondent's argument that the present petition should be dismissed for lack of authorization from the OGCC is without merit.

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[29] 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 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.

[30] G.R. No. 209794, 27 June 2016 [Per *J.* Caguioa].

[31] *Rollo*, pp. 250-260.

[32] *Id*. at 238-240.

[33] *Id*. at 227-236.

The issue on the timeliness of petitioner's appeal before the COA has already been rendered moot

Respondent also questions petitioners' failure to comply with procedural requirements on attachments and timeliness before the COA. It argues that petitioners' patent disregard of procedural rules was clear when they filed their petition for review against COA CGS-Cluster B Decision No. 2011-015 five days (5) after the lapse of the reglementary period. Respondent also insists that petitioners failed to submit relevant and material documents[34] for their appeal.

In *Lumayna v. Commission on Audit*,[35] the Court declared the issue of whether therein petitioners timely filed their motion for reconsideration moot and academic after the COA gave due course to the said motion without stating it was filed out of time. Similarly, in *Rotoras v. Commission on Audit*,[36] the COA resolved therein petitioners' motion for reconsideration notwithstanding the procedural infirmity of belated filing. Hence, the Court ruled that the issue on the belated filing has already been rendered moot.

In this case, the COA, despite initially dismissing petitioners' appeal on technical grounds, reconsidered its earlier decision and gave due course to their motion for reconsideration thereby deciding petitioners' appeal on the merits. The Court, therefore, rules that the technical issues raised by respondent has already been rendered moot.

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[34] COA Audit Observation Memorandum re: Corporate Performance-Based Incentive (CPBI) for 2008, Appeal Memorandum dated 10 December 2010, COA COS-Cluster B Decision No. 2001-015 dated 20 December 2011, Salary/Pay Plan of PSALM, National Power Corporation (NPC) and National Transmission Corporation (TRANSCO), 2009 PSALM Corporation Action Plan (CAP) July 2009, 2009-2018 Corporate Strategic Plan (CSP) July 2009, and 2009 PSALM Corporate Performance Metrics (CPM) July 2009.

[35] G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per *J.* Del Castillo].

[36] G.R. No. 211999, 20 August 2019 [Per *J.* Leonen].

The non-issuance of an Audit Observation Memorandum did not violate petitioners' right to due process

We agree that the supposed failure to issue an AOM to petitioners is not sufficient to invalidate the assailed ND based on due process considerations. Indeed, under Section 4, Rule IV of the 2009 Revised Rules of Procedure of the Commission on Audit (2009 Revised COA Rules),[37] an AOM is not among those that are required to be issued in the course of audit. Thus:

> Section 4. Audit Disallowances/Charges/Suspensions. — In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, **the auditor shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions.** Such ND/NC shall be adequately established by evidence and the conclusions, recommendations or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles. **The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation.** (Emphasis supplied)

Meanwhile, in Section 5.3, Chapter II of the 2009 Rules and Regulations on the Settlement of Accounts,[38] the issuance of an AOM is not automatic, and is only availed of when an audit decision cannot be reached due to incomplete documents or where the deficiencies found during audit do not involve pecuniary loss, to wit:

> 5.3. The audit and examination of transactions pertaining to an account shall be done in accordance with laws, rules, regulations and standards to determine whether these transactions may be allowed, suspended, disallowed or charged in audit. **In case an audit decision cannot as yet be reached due to incomplete documentation/**

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[37] Approved on 15 September 2009; Effective on 28 October 2009.

[38] Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, 15 September 2009; Effective on 06 October 2009.

information, or if the deficiencies noted refer to financial or operational matters which do not involve pecuniary loss, an Audit Observation Memorandum (AOM) shall be issued. (Emphasis supplied)

All told, petitioners were not deprived of their right to due process. In the administrative sense, due process simply means the opportunity to be heard or to explain one's side, or to seek a reconsideration of the action or ruling being impugned.[39] Petitioners were afforded this opportunity when they appealed to the COA CGS-Cluster B and later on, to the COA Proper. In fact, the COA Proper went above what is required when, as mentioned, it gave due course to petitioners' petition for review despite its belated filing.

With procedural matters finally resolved, We now turn our attention to the substantive arguments raised by petitioners.

The grant of the CPBI equivalent to five and a half months of basic pay net of tax to PSALM's employees was correctly disallowed in audit

Petitioners are adamant that there is no need to obtain the approval of the President for the grant of CPBI since it was a "financial reward or incentive," and not a "benefit" covered under Section 64 of RA 9136.

Petitioners argument is untenable.

RA 9136, which created PSALM, specifically provided guidelines in the grant of all emoluments and benefits to the corporation's personnel, thus:

SECTION 64. Fiscal Prudence. — To promote the prudent management of government resources, the creation of new positions and the levels of or increases in salaries and **all other emoluments and benefits** of TRANSCO and PSALM Corp. personnel shall be **subject to the approval of the President of the Philippines**. The

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[39] *Mateo v. Romulo*, G.R. No. 177875, 08 August 2016 [Per *J.* Bersamin].

compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.[40] (Emphasis supplied)

Rule 32 (a) of the Implementing Rules and Regulations of RA 9136 similarly provides:

RULE 32

Fiscal Prudence

(a) Pursuant to Section 64 of the Act, the creation of new positions and the levels of or increases in salaries and **all other emoluments and benefits** of TRANSCO and PSALM personnel shall be **subject to the approval of the President of the Philippines**.[41] (Emphasis supplied)

Clearly, the term "all other emoluments and benefits" is intended to cover every kind of financial grant and payment given to PSALM employees and is thereby covered by the rule requiring Presidential approval. When the law does not distinguish, neither should the Court.[42]

Petitioners' resort to semantics in attempting to distinguish incentive from "all other emoluments and benefits" is made even more specious by the DBM's advice to PSALM recommending an equitable performance-based incentive **in lieu of upgrading the pay and benefits** of PSALM personnel through a harmonized compensation plan, to wit:

x x x We believe that allowances and other fringe benefits to employees should not be an across-the-board entitlement but should be based on individual as well as corporate performance. This is the reason why we proposed an amendment to Special Provision No. 1 of the NPC budget for FY 2008 as submitted to Congress (copy attached

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[40] Electric Power Industry Reform Act of 2001, Republic Act No. 9136, 08 June 2001.

[41] Implementing Rules and Regulations of Republic Act No. 9136, 27 February 2002.

[42] *Philippine National Bank v. Palma*, G.R. No. 157279, 09 August 2005 [Per *J.* Panganiban].

for reference). More strategically, we think that **any upgrading of pay and benefits** at this stage will be a strong disincentive to the privatization effort currently under way.

In lieu of the proposed harmonized compensation plan, therefore we suggest that an equitable performance based incentive package covering allowances, bonus or similar incentives be considered consistent with the above mentioned Special Provision proposed to Congress. (Emphasis supplied)

Evidently, the CPBI was devised as an alternative to implementing an across-the-board increase in allowances and other benefits. Operating on such premise, PSALM cannot claim the CPBI is an incentive not requiring Presidential approval pursuant to RA 9136 whereas the original allowances and benefits proposed to be implemented would be covered by the same law.

Moreover, PSALM should have taken special note of Section 3 (b) and (c) of Administrative Order No. 103 dated 31 August 2004,[43] *viz.*:

SECTION 3. **All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:**

x x x x x x x x x

(b) **Suspend the grant of new or additional benefits to full-time officials and employees and officials, except** for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) **those expressly provided by presidential issuance**;

(c) For other non full-time officials and employees, including members of their governing boards, committees, and commissions: (i) **suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans;** and (ii) in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty

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[43] *Supra* at note 13.

Thousand Pesos (P20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (P20,000.00) per month. (Emphasis supplied)

This issuance should, thus, have cautioned petitioners from granting CPBI, or at least, prompted them to initially seek the approval of the President before the release of the grant. The document that petitioners claim to be a certified true copy of the President's "confidential" approval cannot be given credence because it lacks the signature of the President. It was also established that "the said confidential documents are not among the records available on file or in the possession of the Malacañang Records Office."[44] It also bears stressing that the supposed approval was only procured on 30 December 2009, which was after the PSALM Board of Directors had already approved the grant of CPBI for CY 2009.

At any rate, the grant of CPBI to PSALM employees was truly excessive and extravagant warranting disallowance. Excessive expenditures have been recognized as "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." Meanwhile, extravagant expenditures are described as "those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bound of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious."[45]

Even if PSALM claims to have exceeded its targets and achieved outstanding performance, **the rate of five and a half (5 ½) months basic pay net of tax had no basis at all**. Petitioners should have been guided by the rates of incentives in previous

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[44] *Rollo*, p. 77; confirmation letter dated 17 September 2010 by Dr. Marianito M. Dimaandal, MRO, Office of the President.

[45] *Miralles v. Commission on Audit*, G.R. No. 210571, 19 September 2017, 818 Phil. 380 [Per J. Bersamin].

issuances such as Executive Order No. 486 dated 08 November 1991, entitled *Establishing a Performance-Based Incentive System for Government-Owned or Controlled Corporations and for Other Purposes*. This was enacted to establish "an incentive system for GOCCs, which shall be directly linked to their level of performance and which shall encourage and recognize the outstanding performance and accomplishments with varying incentives."[46]

Executive Order No. 486 was later amended by Executive Order No. 518 dated 29 May 1992[47] setting forth the maximum rate for GOCC incentives and the source from which these incentives are to be funded, thus:

b. Corporate Incentive Awards. — Depending on the degree of performance, GOCCs shall be authorized to allocate an amount equivalent to a percentage of the total annual budget for Personnel Expenses as Cash Incentive Fund. The percentages authorized for each GOCC shall be as follows:

GOCC	Performance Grade	Maximum Cash Incentive Fund
A	(Outstanding)	20 percent
B	(Very Satisfactory)	15 percent
C	(Satisfactory)	10 percent
D	(Fair)	None
E	(Poor)	None

The above incentive fund shall be the source for rewards, either in kind or in cash bonuses, to be granted by GOCCs only to deserving officers and employees based on an evaluation of their individual performance and relative contribution to the attainment of the corporation's goals and targets. **The maximum allowable amount of incentive bonus for a GOCC officer or employee** shall vary according to the performance grade of the GOCC and of his department or division or unit, and to his individual performance but **shall in no**

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[46] Establishing a Performance-Based Incentive System for GOCCs, Executive Order No. 486, 08 November 1991.

[47] Amendments to E.O. No. 486 (s. 1991) Re: Establishment of Performance-Based Incentive System for GOCCs, Executive Order No. 518, 29 May 1992.

case exceed three (3) months' basic salary or its equivalent.[48] (Emphasis supplied)

It is crystal clear from these issuances that the permissible maximum rate for incentives is three (3) months basic salary or its equivalent. No other law or issuance allows PSALM to grant more than this. Consequently, the CPBI given by PSALM to its employees was indeed excessive and extravagant as it exceeded reasonable limits.

Respondent, therefore, did not act with grave abuse of discretion in disallowing the CPBI equivalent to five and a half (5 ½) months basic salary net of tax, or a total disbursement of Php56,604,286.37.

The payees are required to return the amounts they received pursuant to the principle of solutio indebiti

In determining the civil liability to return disallowed amounts of the persons held liable in the ND, the Court is now guided by the recent case of *Madera v. Commission on Audit*,[49] wherein a definite set of rules was established in consideration of previous divergent Court rulings, to wit:

> 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.

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[48] Subsection (b), Section 4 of Executive Order No. 486 dated 08 November 1991, as amended.

[49] G.R. No. 244128, 08 September 2020 [Per *J.* Caguioa].

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

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

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

The Court made the above pronouncement after thoughtful study and application of Sections 38[50] and 39,[51] in relation to Section 43[52] of the Administrative Code[53] whereby government

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[50] 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 x 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.

[51] 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.

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

Any official or employee of the Government knowingly incurring any

officials who approved and certified the grant of disallowed benefits are held solidarily liable to return the amount thereof only when they acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties.

Meanwhile, the Court applied the principle of *solutio indebiti* and unjust enrichment in considering the liability of passive recipients regardless of their good faith in the receipt of the disallowed amounts.[54] These concepts are based on Article 2154[55] of the Civil Code, which provides that if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises.

The extent of the passive recipients' liability to return is further reinforced by COA Circular No. 2009-006 dated 15 September 2009,[56] which provides the liability of all persons identified in NDs:

SECTION 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:

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obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

[53] Executive Order No. 292, 25 July 1987.

[54] *Madera v. Commission on Audit*, G.R. No. 244128, 08 September 2020 [Per *J.* Caguioa].

[55] Article 2154. 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.

[56] Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, 15 September 2009.

x x x x x x 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 the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.2 **The liability for audit charges shall be measured by the individual participation and involvement of public officers** whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

16.3 **The liability of persons determined to be liable under an ND/NC shall be solidary** and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable. (Emphasis supplied)

The above rule served as validation of the precept that passive recipients, such as herein payees, shall only be liable to the extent of the amount they unduly received, in contrast to officers who are guilty of bad faith, malice or gross negligence in the disbursement of the disallowed amounts shall be solidarily liable therein.[57]

There are, however, exceptions to the general application of *solutio indebiti* when applied to passive recipients, namely: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; (3) where social justice or humanitarian considerations are attendant; and (4) other *bona fide* exceptions as may be determined on a case to case basis.[58] Nonetheless, the facts in the case at bar present no opportunity for the application of any of the above exceptions to the principle of *solutio indebiti*.

First, the grant of CPBI to PSALM employees cannot be considered as genuinely given in consideration of services rendered. Senior Associate Justice Perlas-Bernabe, in her

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[57] *Supra* at note 47.

[58] *Id*.

Concurring Opinion to *Madera*, expounded on meaning of this exception, *viz.*:

> Nevertheless, the foregoing general rule mandating passive recipients to return should not apply where the disallowed compensation was **genuinely intended as payment for services rendered**. As examples, these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. To be sure, Republic Act No. 6758, otherwise known as the "Compensation and Position Classification Act of 1989," "standardize[s] salary rates among government personnel and do[es] away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Section 12 thereof lays down the general rule that all allowances of State workers are to be included in their standardized salary rates, with the exception of the following allowances:
>
> 1. Representation and transportation allowances (RATA);
> 2. Clothing and laundry allowances;
> 3. Subsistence allowances of marine officers and crew on board government vessels;
> 4. Subsistence allowance of hospital personnel;
> 5. Hazard pay;
> 6. Allowance of foreign service personnel stationed abroad; and
> 7. **Such other additional compensation not otherwise specified herein as may be determined by the DBM.**
>
> The said allowances are the "only allowances which government employees can continue to receive in addition to their standardized salary rates." Conversely, "all allowances not covered by the [above] exceptions x x x are presumed to have been integrated into the basic standardized pay" and hence, subject to disallowance.[59]

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[59] *Madera v. Commission on Audit*, Separate Concurring Opinion per *SAJ* Perlas-Bernabe, pp. 11-12.

In determining whether a certain benefit was given to compensate actual services rendered, the foremost consideration should be the legality of the expenditure. This presupposes that there is a law authorizing its grant and all the legal conditions for the disbursement were met. However, for reasons not affecting the genuineness of the payout, such as lack of reportorial requirements or minor missteps in the procedure, the transaction had to be disallowed as a result of some form of irregularity. Here, We have already determined there was no law, legal issuance, or presidential approval authorizing the CPBI disbursement. Since this disbursement is illegal and unlawful, it cannot be an exception for the return of the amounts received.

Second, there is no allegation or proof that the payees will suffer irreparable harm equivalent to any form of undue prejudice for the return of the disallowed amounts. Conversely, it was the government that actually suffered undue prejudice through inappropriate use of government funds.

Third, the exorbitant rate given by PSALM as CPBI precludes the Court from applying social justice or equity considerations in exonerating the payees from liability. A perusal of the records shows that **only 257 officials and employees of PSALM benefited from the Php56,604,286.37 disbursed. Worse, some of the payees received as much as Php472,680.00 for CPBI alone.** The inequity this Court must remedy should unquestionably be in favor of the government and not the payees who received extortionate amounts.

For these reasons, the Court must apply the general rule and hold the payees personally liable for the amounts of CPBI they received. This is only fitting in light of the above circumstances precluding the application of any of the exceptions for return.

The remaining approving and certifying officers are solidarily liable for the disallowed amounts

To recall, the following approving and certifying officers remain liable after the COA cleared other officers, who merely

performed ministerial duties in the disbursement of the disallowed amounts, from liability:

Name	Position/Designation	Nature of Participation in the Transaction
Jose C. Ibazeta Dorothy M. Calimag	President and CEO Manager, Human Resources and General Services Department	For certifying that the charges to budget are necessary, lawful and under her direct supervision and that supporting documents are valid, proper and legal.
Jose C. Ibazeta Dorothy M. Calimag	President and CEO Manager, Human Resources and General Services Department	For approving the payments of the CPBI.
Jose C. Ibazeta	President and CEO	For approving PSALM Memorandum Order No. 09-21 dated 16 December 2009 (Guidelines on the grant of the 2009 CPBI).
Board of Directors	PSALM Board of Directors	For signing/approving Board Resolution No. 2009-1215-006 dated 15 December 2009.

After applying our current standards, the Court finds basis to hold the above officers solidarily liable for the disallowed amount.

Generally, "public officers are accorded with the presumption of regularity in the performance of their official functions — [t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it."[60] However, when there is considerable proof of evident bad faith, malice or gross negligence, the solidary liability of the officers arises, thus:

> 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**.

[60] *Supra* at note 47.

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 operating with **furtive design or some motive of self-interest or ill will for ulterior purposes**. x x x[61]

The following badges of whether an authorizing or certifying officer exercised the diligence of a good father of a family are also instructive:[62]

> x x x For one to be absolved of liability the following requisites [may be considered]: (1) a certificate of availability of funds, pursuant to Section 40 of the Administrative Code; (2) an in-house or a Department of Justice legal opinion; (3) lack of jurisprudence disallowing a similar case; (4) the issuance of the benefit is traditionally practiced within the agency and no prior disallowance has been issued; and (5) on the question of law, that there is a reasonable textual interpretation on the expenditure or benefit's legality.[63]

Verily, the Court sees no reason for PSALMS's failure to obtain presidential approval for the grant of CPBI to its employees. The law is clear, straightforward, and leaves no other room for interpretation. Indeed, this requirement exists in PSALM's own enabling law, which the approving and certifying officers are presumed to know.

PSALM's patent failure to observe the law is made more apparent by its initial attempt to secure the approval of the President, through the DBM, for the implementation of a Harmonized Power Sector Compensation Plan. The DBM, in its Letter 24 January 2008,[64] suggested for PSALM to come up

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[61] *Madera v. Commission on Audit*, G.R. No. 244128, 08 September 2020 [Per *J.* Caguioa], citing *Lumayna v. Commission on Audit*, G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per *J.* Del Castillo].

[62] *Supra* at note 47.

[63] *Madera v. Commission on Audit*, Separate Concurring Opinion per *J.* Leonen, p. 8.

[64] *Rollo*, p. 48.

with an equitable performance-based incentive in lieu of the proposed harmonized plan. Coupled with PSALM, earlier attempt to secure Presidential approval for the harmonized compensation plan, PSALM had no reason to forego said approval for the grant of CPBI intended to substitute such compensation plan. PSALM's failure in this wise, despite being well aware of the legal requirement necessitating Presidential approval, can only be interpreted as an attempt to bypass such prerequisite.

The Court likewise notes the improbable manner by which PSALM formulated its performance metrics and accomplishment rating thereby generating the grant of CPBI equivalent to five and one-half (5.5) months of basic salary net of tax. The performance metrics and corporate targets were approved only in the last quarter of 2009, specifically on 16 October 2009, while Board Resolution No. 2009-1215-006 recognizing PSALM's accomplishments and approving the grant of CPBI resulting from said feats was issued immediately on 15 December 2009. Board Resolution No. 2009-1215-006 even concluded that "as of November 2009, PSALM has in fact accomplished its set target for the year."[65] The period of two (2) months from the date they set their targets until the date when they granted the benefit gives an impression that the targets set were made to conform to what was already accomplished by PSALM.

From the foregoing, it becomes increasingly clear that the highly irregular process was employed to circumvent the stringent requirements of the law, and give the grant of the exorbitant benefit the appearance of legitimacy. Further militating against petitioners' good faith is that the CPBI was given as an across-the-board incentive instead of it being based on individual and corporate performance. This contradicts the intent of the DBM in suggesting a performance-based incentive in lieu of across-the-board benefits.

Intrinsically, the actions of the remaining approving and certifying officers can only be equated with malice and gross

[65] *Id.* at 62.

negligence amounting to bad faith. On those grounds, they remain solidarily liable for the disallowed amounts.

WHEREFORE, the petition is **DENIED**. Decision No. 2018-301 dated 15 March 2018 promulgated by the Commission on Audit is hereby **AFFIRMED** with clarification that the approving and certifying officers are solidarily liable for the disallowed amounts while the payees are liable only for the amounts they personally received.

SO ORDERED.

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

EN BANC

[G.R. No. 246332. December 9, 2020]

AES WATCH, BUKLOD PAMILYA, CAPITOL CHRISTIAN LEADERSHIP, CITIZENS' CRIME WATCH, CONNECTING BUSINESSMEN IN THE MARKETPLACE TO CHRIST, LATTER RAIN HARVEST MINISTRIES, ONE VOTE OUR HOPE, UPPER ROOM BRETHREN CHURCH (PHILIPPINES), BERNARD C. ROQUE, DIEGO L. MAGPANTAY, DOLORES V. LAVADO, ERNESTO DELA ROSA DEL ROSARIO, JOSE LAGUNZAD GONZALES, JUAN SANTOS PRING, MARIA CORAZON MENDOZA AKOL, MELCHOR GRUELA MAGDAMO, NELSON JAVA CELIS, PABLO O. OLMEDA, TROADIO BENITEZ ABITONA, VICENTE ALEJO MACATANGAY, WENDELL ANACAY UNLAYAO, *Petitioners, v.* **COMMISSION ON ELECTIONS (COMELEC), SMARTMATIC TOTAL INFORMATION MANAGEMENT,** *Respondents.*

UNITED FILIPINO CONSUMERS & COMMUTERS (UFCC), FROILAN M. DOLLENTE, TEOFILO T. PARILLA, *Movant-Intervenors,*

BAGUMBAYAN VNP MOVEMENT, INC. represented by CARISSA O. COSCOLLUELA, *Petitioner-In-Intervention.*[1]

APPEARANCES OF COUNSEL

Gordon Reyes Buted Viado & Blanco Law Offices for petitioner-intervenor.

The Solicitor General for public respondent.

ACCRA Law Office for Smartmatic TIM Corporation.

[1] The motion to intervene is granted as discussed in this Resolution.

R E S O L U T I O N

LOPEZ, *J.*:

This is a petition for *mandamus* to compel the Commission on Elections (COMELEC) to review the voter verifiable paper audit trail, to employ another method of digitally signing the election results, and to remove the supposed prohibition on capturing devices while inside the polling place.

ANTECEDENTS

In 1997, Republic Act (RA) No. 8436[2] authorized the COMELEC to adopt an automated election system (AES) using appropriate technology for voting and electronic devices to count votes and canvass or consolidate results. In 2007, RA No. 9369[3] amended the provisions of RA No. 8436 allowing the COMELEC to use a paper-based or a direct recording electronic election system as it may deem appropriate and practical.[4] The changes also provided the minimum system capabilities,[5] and required

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[2] AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES; approved on December 22, 1997.

[3] AN ACT AMENDING REPUBLIC ACT NO. 8436, ENTITLED "AN ACT AUTHORIZING THE COMMISSION ON ELECTIONS TO USE AN AUTOMATED ELECTION SYSTEM IN THE MAY 11, 1998 NATIONAL OR LOCAL ELECTIONS AND IN SUBSEQUENT NATIONAL AND LOCAL ELECTORAL EXERCISES, TO ENCOURAGE TRANSPARENCY, CREDIBILITY, FAIRNESS AND ACCURACY OF ELECTIONS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 881, AS AMENDED, REPUBLIC ACT NO. 7166 AND OTHER RELATED ELECTION LAWS, PROVIDING FUNDS THEREFOR AND FOR OTHER PURPOSES; approved on January 23, 2007; Republic Act (RA) No. 8436, as amended will be used to refer to the amendments introduced by RA No. 9369 for consistency.

[4] RA No. 8436, Sec. 5.

[5] RA No. 8436, Sec. 6.

the authentication of electronically transmitted election results.[6] Accordingly, the COMELEC implemented a paper-based AES technology and utilized optical mark reader machines in the 2010, 2013, 2016, and 2019 National Elections. Specifically, the COMELEC used the Precinct Count Optical Scan (PCOS) machines in 2010, and 2013, and the Vote-Counting Machines (VCM) in 2016 and 2019.[7] In these national elections, the members of the electoral board[8] are assigned with an *iButton* security key and a personal identification number (PIN), which they must use in initiating the voting machines to accept the paper ballots and in closing them to print and transmit elections results.[9]

Yet, several groups and individuals questioned the AES implementation and the use of voting machines.[10] In *Capalla*

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[6] RA No. 8436, Sec. 30.

[7] *Bagumbayan-VNP Movement, Inc. v. COMELEC*, 782 Phil. 1306, 1309-1310 (2016). The PCOS and VCM are optical mark readers machines but refer to different models. See Commission on Elections, Resolution Nos. 8739 and 9640 (February 15, 2013), 10057 (February 11, 2016), 10460 (December 6, 2018). These resolutions serve as the implementing guidelines on the process of voting, counting and transmission of election results. A voter should accomplish the ballot by fully shading the oval appearing before the names of his or her chosen candidate. Thereafter, the voter shall insert the ballot to the voting machine's entry slot.

[8] See RA No. 10756 (April 8, 2016), Sec. 2 (c). Electoral board also refers to the Board of Elections Inspectors.

[9] See Commission on Elections, Revised General Instructions for the Board of Elections Inspectors (BEI) on the Voting, Counting, and Transmission of Results in Connection with the May 10, 2010, National and Local Elections, Resolution No. 8786 (March 4, 2010), Sections 34 and 40; Commission on Elections, Vote-Counting Machine (VCM) Operation Procedures for Final Testing and Sealing (FTS); Election Day and Transmission of Election Results in Connection with the May 13, 2019 National and Local Elections, Resolution No. 10487 (January 23, 2019) Sec. 3. The procedure in using the *iButtons* and PINs are essentially the same in the 2010, 2013, 2016 and 2019 National Elections.

[10] *Bagumbayan-VNP, Inc. v. COMELEC, supra* note 7; *Capalla v. COMELEC*, 687 Phil. 617 (2012); *Guingona, Jr. v. COMELEC*, 634 Phil. 516 (2010); *Roque, Jr. v. COMELEC*, 615 Phil. 149 (2009).

v. COMELEC,[11] the petitioners raised concerns about the alleged absence of digital signatures on the 2010 election results. The Court held that the PCOS machines could produce digitally signed transmissions.[12] In *Bagumbayan-VNP Movement, Inc. v. COMELEC*,[13] the petitioner sought to compel the COMELEC to enable the VCM's voter verification feature in the 2016 National Elections by printing the voter's receipts, which would allow voters to verify whether their votes are registered. The petitioner added that the COMELEC's position that the voter's receipts are not essential in a paper-based AES, which utilized paper ballots, is non-compliant with the minimum system capabilities under the law.[14] In that case, the Court ruled that the minimum system capabilities are mandatory and that the ballots and voter verifiable paper audit trail (VVPAT) are not the same:

> The minimum functional capabilities enumerated under Section 6 of Republic Act 8436, as amended, are mandatory. These functions constitute the most basic safeguards to ensure the transparency, credibility, fairness and accuracy of the upcoming elections.
>
> **The law is clear. A "voter verified paper audit trail" requires the following: (a) individual voters can verify whether the machines**

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[11] *Capalla v. COMELEC, supra*.

[12] The Court quoted the clarificatory questions of former Associate Justice Antonio Carpio and Attorney Lazatin's response regarding the digital signature to explain this capability and the process on how the election results are authenticated using the digital signature. *Id.* at 681-688.

[13] *Supra* note 7.

[14] RA No. 8436, as amended by RA No. 9369, SEC. 6. Minimum System Capabilities. — "The automated election system must at least have the following functional capabilities:

x x x x

(e) Provision for voter verified paper audit trail;
(f) System auditability which provides supporting documentation for verifying the correctness of reported election results;

x x x x

(n) Provide the voter a system of verification to find out whether or not the machine has registered his choice[.]"

have been able to count their votes; and (b) that the verification at minimum should be paper based.

There appears to be no room for further interpretation of a "voter verified paper audit trail." **The paper audit trail cannot be considered the physical ballot**, because there may be instances where the machine may translate the ballot differently, or the voter inadvertently spoils his or her ballot.

x x x x

The required system capabilities under Republic Act No. 8436, as amended, are the ***minimum*** safeguards provided by law. Compliance with the minimum system capabilities entails costs on the state and its taxpayers. If minimum system capabilities are met but not utilized, these will be a waste of resources and an affront to the citizens who paid for these capabilities.

It is true that the Commission on Elections is given ample discretion to administer the elections, but certainly, its constitutional duty is to "enforce the law." The Commission is not given the constitutional competence to amend or modify the law it is sworn to uphold. Section 6 (e), (f), and (n) of Republic Act No. 8436, as amended, is law. Should there be policy objections to it, the remedy is to have Congress amend it.

The Commission on Elections cannot opt to breach the requirements of the law to assuage its fears regarding the VVPAT. Vote-buying can be averted by placing proper procedures. The Commission on Elections has the power to choose the appropriate procedure in order to enforce the VVPAT requirement under the law, and balance it with the constitutional mandate to secure the secrecy and sanctity of the ballot.

We see no reason why voters should be denied the opportunity to read the voter's receipt after casting his or her ballot. There is no legal prohibition for the Commission on Elections to require that after the voter reads and verifies the receipt, he or she is to leave it in a separate box, not take it out of the precinct. Definitely, the availability of all the voters' receipts will make random manual audits more accurate.[15] (Emphases and underscoring supplied; citations omitted.)

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[15] *Bagumbayan-VNP Movement, Inc. v. COMELEC, supra* note 7, at 1322-1323.

Thus, the Court ordered the COMELEC to enable the VCMs' vote verification feature, which prints the voter's receipts showing the voter's choice. The Court likewise clarified that the COMELEC could issue guidelines regulating the release and disposal of the voter's receipts. On motion for reconsideration, the Court explained that the VVPAT requirement is substantially complied with when the voter's receipt is printed, and the voters can physically verify their votes. Also, the COMELEC may add features to the VVPAT in future elections.[16]

The COMELEC complied with the Court's directive in *Bagumbayan* and issued Resolution No. 10088[17] to serve as guidelines and regulations on election day. The COMELEC enabled the VCMs printing capability of the voter's receipts and provided the mechanism for objections on VVPAT discrepancies. However, the COMELEC prohibited voters to "*[u]se capturing devices, including, but not limited to, digital cameras or cellular phones* ***for whatever purpose*** *while inside the polling place*" during the casting of votes.[18] In the 2019 National Elections, the COMELEC issued Resolution No. 10460,[19] which adopted the procedures on the implementation of VVPAT in Resolution No. 10088 with modification in that the phrase "*for whatever purpose*" on the use of capturing devices was deleted.

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[16] *Bagumbayan-VNP Movement, Inc. v. COMELEC*, G.R. No. 222731 (Notice), March 17, 2016.

[17] AMENDING CERTAIN PROVISIONS OF RESOLUTION NO. 10057 DATED FEBRUARY 11, 2016 OR OTHERWISE KNOWN AS THE GENERAL INSTRUCTIONS FOR THE BOARDS OF ELECTION INSPECTORS (BEI) ON THE TESTING AND SEALING OF VOTE COUNTING MACHINES (VCMs), AND VOTING, COUNTING AND TRANSMISSION OF ELECTION RESULTS IN CONNECTION WITH THE 09 MAY 2016 NATIONAL AND LOCAL ELECTIONS, RESOLUTION NO. 10088; promulgated on April 12, 2016.

[18] See COMELEC Resolution No. 10088, Section 2.

[19] COMMISSION ON ELECTIONS, GENERAL INSTRUCTIONS FOR THE ELECTORAL BOARDS (EBs) ON THE PROCESS OF VOTING, COUNTING, AND TRANSMISSION OF ELECTION RESULTS IN CONNECTION WITH THE 13 MAY 2019 NATIONAL AND LOCAL ELECTIONS, RESOLUTION NO. 10460; promulgated on December 6, 2018.

On April 24, 2019 or days before the May 13, 2019 National Elections, AES-WATCH, *et al.*,[20] filed a petition for *mandamus* seeking the COMELEC to faithfully implement the directive in *Bagumbayan* case. They claimed that the COMELEC had not adopted measures for the VVPAT's "*auditability*" and proposed a "*camerambola*"[21] solution as follows:

V	V	P	A	T
VOTER	VERIFIED	PAPER	AUDIT	TRAIL
Each Voter may Verify the Paper that rolls out from the counting machine. The voter may not yet take any photograph of that paper until after deposit of that paper into a box, to randomize voter identity, after which deposit the vote can no longer be marketable for sale to any vote-buyer (if any).			Audit Trail can be done at the close of polls by shuffling the box ("karambola") and then allowing volunteers to use their own cameras to take photos of each VVPAT which by rule must remain inside the precinct. Photos become the Audit Trail for the People.[22]	

Also, AES-WATCH, *et al.*, asked to declare as unconstitutional the prohibition on poll watchers to take photographs of the proceedings during the elections. They claimed that the prohibition is inconsistent with Section 179 of the Omnibus Election Code and that the phrase "*for whatever purpose*" was sweepingly broad to include proceedings during the counting of votes, and the transmission and printing of election returns. Moreover, AES-WATCH, *et al.* argued that the COMELEC must comply with the method of digitally signing the election results under Sections 22 and 30 of RA No. 8436, as amended. They alleged that the *iButtons* and PINS were not personal to the members of the electoral boards but are mere machine

[20] Petitioners are composed of groups and individuals belonging to different religious groups, election reform advocacy group, and anti-crime/corruption groups. The individual petitioners are composed of church leaders and advocates of election reforms and anti-crime and corruption; *rollo*, pp. 3-46.

[21] Petitioners combined the words "camera" and "karambola" (to shuffle); *id.* at 7.

[22] *Id.*

identifiers. Thus, the previous elections' electronically transmitted results were not adequately authenticated because they lack the members' electronic signatures. The pronouncement in *Capalla* case on the matter of digital signature requirement was not categorical but a mere *obiter dictum*.[23]

On May 2, 2019, United Filipino Consumers & Commuters, Froilan M. Dollente, and Teofilo Parilla intervened in the case. They supported AES-WATCH, *et al.*, and urged the COMELEC to submit a complete list of the Media Access Control (MAC) and Internet Protocol (IP) addresses in the 2019 National Elections. On May 10, 2019, Bagumbayan-VNP Movement, Inc. likewise intervened. It adopted the AES-WATCH, *et al.*'s arguments and added that the prohibition against capturing devices inside the polling place would make it difficult for poll watchers to record any irregularity and for voters to object on the VVPAT discrepancies due to limited time to verify their votes.

On May 22, 2019, the COMELEC, through the Office of the Solicitor General (OSG), averred that the conclusion of the 2019 National Elections mooted the petition. Alternatively, the OSG claimed that AES-WATCH, *et al.*, have no legal standing to file the petition for lack of material interest and that *mandamus* will not lie because COMELEC had yet to respond to the letter/request on their queries.[24] On the substantive issues, the OSG claimed that COMELEC had already implemented the VVPAT capability and that no law expressly allows "*camerambola*." The proposed solution is very tedious because it amounts to a manual audit of all the votes in all precincts by taking a photograph of every VVPAT issued by the voting machine. At any rate, the random manual audit under COMELEC Resolution Nos. 10458[25] and

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[23] *Rollo*, p. 24.

[24] *Id.* at 98-129.

[25] IN THE MATTER OF THE GENERAL INSTRUCTIONS FOR THE CONDUCT OF RANDOM MANUAL AUDIT (RMA) FOR THE 13 MAY 2019 AUTOMATED SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND SUBSEQUENT ELECTIONS THEREAFTER, RESOLUTION NO. 10458; promulgated on December 5, 2018.

10525[26] sufficiently addressed the objective of testing the voting machines' accuracy and reliability. Also, the OSG agreed that Section 179 of the Omnibus Election Code allows poll watchers to take photographs during the counting of votes, but not during the casting of votes. Lastly, the *Capalla* ruling already settled the issue on digital signatures. On May 24, 2019, SMARTMATIC Total Information Management filed a comment which essentially reiterated the OSG's arguments.[27]

RULING

AES-WATCH, et al. and Bagumbayan-VNP Movement, Inc. have legal standing but not United Filipino Consumers & Commuters, Froilan Dollente, and Teofila Parilla.

Judicial review is not just a power but also a duty.[28] Yet, it does not repose upon the courts a "*self-starting capacity*."[29] Specifically, judicial review may be exercised only when the person challenging the act has the requisite legal standing which refers to a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result

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[26] COMMISSION ON ELECTIONS, IN THE MATTER OF THE AMENDMENTS TO THE GENERAL INSTRUCTIONS FOR THE CONDUCT OF RANDOM MANUAL AUDIT (RMA) FOR THE 13 MAY 2019 AUTOMATED SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND SUBSEQUENT ELECTIONS THEREAFTER, RESOLUTION NO. 10525, promulgated on April 11, 2019.

[27] *Rollo*, pp. 136-179.

[28] Judicial power refers to the duty and power "to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." (CONSTITUTION, Art. VIII, Sec. 1).

[29] The Court has no self-starting capacity and must await the action of some litigant so aggrieved as to have a justiciable case. (Shapiro and Tresolini, American Constitutional Law, Sixth Edition, 1983, p. 79).

of its enforcement.[30] The party's interest must also be material as distinguished from mere interest in the question involved, or a mere incidental interest. It must be personal, and not based on a desire to vindicate the constitutional right of some third and unrelated party.[31]

In private suits, standing is governed by the "*real-parties-in interest*" rule as contained in the Rules of Civil Procedure.[32] The question as to real party in interest is whether he is the party who would be benefited or injured by the judgment, or the party entitled to the avails of the suit. It is important to note that standing, because of its constitutional and public policy underpinnings, is different from questions relating to whether a particular plaintiff is the real party in interest or has capacity to sue. Standing is a special concern in constitutional law because cases are brought not by parties who have been personally injured by the operation of a law. The plaintiff who asserts a "*public right*" in assailing an allegedly illegal official action, does so as a representative of the general public. Hence, he has to make out a sufficient interest in the vindication of the public order and the securing of relief.[33] The question in standing is whether such parties have "*allege[d] such a personal stake in the outcome of the controversy as to assure that concrete adverseness which*

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[30] Cruz, Philippine Political Law, 2002 Ed., p. 259. See also *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936); *Board of Optometry v. Hon. Colet*, 328 Phil. 1187, 1196-1197 (1996); *Police General Macasiano (Ret.) v. National Housing Authority*, 296 Phil. 56, 63-64 (1993); *Santos III v. Northwestern Orient Airlines*, 285 Phil. 734, 742-743 (1992); and *Nat'l Economic Protectionism Association v. Ongpin*, 253 Phil. 643, 649 (1989).

[31] *Hon. Aguinaldo v. Pres. Benigno Simeon C. Aquino III*, 801 Phil. 492, 522 (2016).

[32] It provides that "every action must be prosecuted [or defended] in the name of the real party in interest." Accordingly, the "real-party-in interest" is "the party who stands to be benefited or injured by the judgment in the suit or "the party entitled to the avails of the suit." Succinctly put, the plaintiff's standing is based on his own right to the relief sought. (*Salonga v. Warner Barnes & Co. Ltd.*, 88 Phil. 125, 131 [1951]).

[33] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 756 (2006).

sharpens the presentation of issues upon which the court [so largely] depends for illumination of difficult constitutional questions."[34]

This Court has previously ruled that for suits filed by taxpayers, legislators, or concerned citizens, they must still claim some kind of injury-in-fact and allege that the continuing act has denied them some right or privilege to which they are entitled.[35] These parties have no legal standing unless they sustained or are in imminent danger of sustaining an injury as a result of the complained act.[36]

Here, AES-WATCH, *et al.*, assail the constitutionality of the prohibition on poll watchers from taking photographs of the proceedings during the elections as well as the COMELEC's compliance with the *Bagumbayan* ruling. However, they did not allege any material injury or claim that they are poll watchers, registered voters, candidates, members of a political party, or members of an accredited citizens group in the 2019 National Elections. Nevertheless, we deem it proper to relax the requirement of legal standing given AES-WATCH, *et al.*'s allegation that they are filing the petition as citizens.[37] Moreover, they raised questions relating to the importance of having credible and informed elections such as the AES' minimum system capability and the VVPAT requirement. Similarly, we grant Bagumbayan-VNP Movement, Inc.'s intervention because it has a material interest in the case as a political party which tends to suffer injury if its poll watchers cannot exercise their rights and duties under the Omnibus Election Code. Besides, it has candidates in the 2019 National

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[34] *J.G. Summit Holdings, Inc. v. CA*, 490 Phil. 579 (2005).

[35] *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, citing *Francisco, Jr. v. House of Representatives*, 460 Phil. 830 (2003).

[36] *Private Hospitals Association of the Philippines, Inc. (PHAPI) v. Medialdea*, G.R. No. 234448, November 6, 2018, 884 SCRA 350, 416.

[37] See *Guingona, Jr. v. COMELEC*, 634 Phil. 516 (2010); *Roque, Jr. v. COMELEC*, 615 Phil. 149 (2009). See also *Integrated Bar of the Phils. v. Hon. Zamora*, 392 Phil. 618 (2000).

Elections and will be affected if there is non-compliance with the VVPAT requirement.[38]

On the other hand, United Filipino Consumers & Commuters, Froilan Dollente, and Teofilo Parilla failed to establish that they have the requisite personal and substantial interest. They did not sustain any direct injury or is in danger of suffering any damages from the assailed COMELEC actions. They were silent in what capacity they are seeking for intervention. They claimed that the issues are of "*transcendental importance*," but failed to allege any interest in the outcome of the case.[39] Hence, their motion to intervene must be denied.

Mandamus will not lie to control the judgment of an independent constitutional body over matters which the law gives it the authority to decide absent grave abuse of discretion.

Mandamus is a command requiring the performance of a specific duty resulting from the party's official station to whom the writ is directed or from the operation of law.[40] It is available when a tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office.[41] The remedy lies to compel the performance of

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[38] *Rollo*, p. 78.

[39] See *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 899 (2003). In that case, the Court observed that it has "*adopted a liberal attitude on the locus standi of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people, as when the issues raised are of paramount importance to the public.* ***Such liberality does not, however, mean that the requirement that a party should have an interest in the matter is totally eliminated. A party must, at the very least, still plead the existence of such interest, it not being one of which courts can take judicial notice***." (Emphases and italics supplied; citation omitted.)

[40] See Justice Jose Feria, *et al.*, Civil Procedure Annotated (2001 ed.), p. 486.

[41] RULES OF COURT, Rule 65, Sec. 3.

a ministerial duty.[42] It can only direct the tribunal, body, or official to act, but not in a particular way.[43] It cannot direct the exercise of judgment[44] unless there is grave abuse of discretion.[45]

A ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. It is one as to which nothing is left to the discretion of the person who must perform the act. On the other hand, a discretionary act refers to the liberty to decide according to the principles of justice and one's idea of what is right and proper under the circumstances, without willfulness or favor. As applied to public functionaries, it means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. If the law imposes a duty upon a public officer and gives him a right to decide how or when the duty shall be performed, it is discretionary and not ministerial.[46]

The following requirements must be present to warrant the issuance of a writ of *mandamus,* to wit: (1) the petitioner has a clear and unmistakable legal right to the act demanded;[47] (2) it is the duty of the respondent to perform the act because it is required by law; (3) the respondent unlawfully neglects the duty enjoined by law or unlawfully excludes the petitioner from the use or enjoyment of the right or office; (4) the act to be performed is ministerial; and (5) there is no plain, speedy, and

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[42] See *Quizon v. COMELEC*, 569 Phil. 323, 329 (2008); *Knecht v. Hon. Desierto*, 353 Phil. 494, 503 (1998); Justice Jose Feria, *et al.*, Civil Procedure Annotated (2001 ed.), p. 486.

[43] See *Ampatuan, Jr. v. Sec. De Lima*, 708 Phil. 153, 167 (2013).

[44] See *Quizon v. COMELEC, supra*.

[45] See *Angchangco, Jr. v. Hon. Ombudsman*, 335 Phil. 766, 772 (1997).

[46] *Lamb v. Phipps*, 22 Phil. 456, 474 (1912).

[47] See Justice Jose Feria, *et al.*, Civil Procedure Annotated (2001 ed.), p. 488.

adequate remedy in the ordinary course of law.[48] These requirements are wanting in this case. The assailed COMELEC actions involve the exercise of judgment. Moreover, there was no grave abuse of discretion.

Foremost, the COMELEC is vested with the constitutional power and function to "*[e]nforce and administer all laws and regulations relative to the conduct of an election.*"[49] Among its powers is the promulgation of rules and regulations of election laws.[50] It exercises discretion on how certain aspects of elections are implemented. This is explicit in the following provisions of RA No. 8436, as amended, by RA No. 9369, thus:

> SEC. 13. *Continuity Plan*. — The AES shall be so designed to include a continuity plan in case of a systems breakdown or any such eventuality which shall result in the delay, obstruction or nonperformance of the electoral process. Activation of such continuity and contingency measures shall be undertaken in the presence of representatives of political parties and citizens' arm of the Commission who shall be notified by the election officer of such activation.
>
> All political parties and party-lists shall be furnished copies of said continuity plan at their official addresses as submitted to the Commission. The list shall be published in at least two newspapers of national circulation and shall be posted at the website of the Commission at least fifteen (15) days prior to the electoral activity concerned.
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> x x x x
>
> SEC. 18. *Procedure in voting*. — The Commission shall prescribe the manner and procedure of voting, which can be easily understood and followed by the voters, taking into consideration, among other things, the secrecy of the voting.
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> SEC. 19. *Closing of polls*. — The Commission shall prescribe the time, manner and procedure of closing the polls and the steps for the

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[48] See *Bagumbayan-VNP Movement, Inc. v. COMELEC, supra* note 16.

[49] CONSTITUTION, Art. IX-C, SEC. 1; Batas Pambansa Bilang 881, SEC. 52 (c).

[50] OMNIBUS ELECTIONS CODE, SEC. 52 (2).

correct reporting of votes cast and the proper conduct of counting for areas covered by the AES.

x x x x

SEC. 21. *Counting Procedure*. — The Commission shall prescribe the manner and procedure of counting the votes under the automated system: *Provided*, That apart from the electronically stored result, thirty (30) copies of the election return are printed.

x x x x

SEC. 37. *Rules and Regulations*. — The Commission shall promulgate rules and regulations for the implementation and enforcement of this Act. x x x.

x x x x

Here, the petitioners and intervenors failed to show that the COMELEC unjustifiably neglects the performance of a duty enjoined by law. They maintain that the COMELEC did not adhere to the *Bagumbayan* ruling on the matter of VVPAT requirement. As a solution, they propose the "*camerambola*" method. However, a comparison of the dispositive portion of the *Bagumbayan case* and the COMELEC guidelines in the 2019 National Elections reveals the futility of their theory. As held in the *Bagumbayan*, the VVPAT requirement is substantially complied with when the voter's receipt is printed, and the voter can physically verify his or her vote,[51] to wit:

WHEREFORE, the Petition for [*Mandamus*] is **GRANTED**. The Commission on Elections is **ORDERED** to enable the vote verification feature of the vote-counting machines, which prints the voter's choices without prejudice to the issuance of guidelines to regulate the release and disposal of the issued receipts in order to ensure a clean, honest, and orderly elections such as, but not limited to, ensuring that after voter verification, receipts should be deposited in a separate ballot box and not taken out of the precinct.

SO ORDERED.[52]

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[51] *Bagumbayan-VNP Movement, Inc., supra* note 16.

[52] *Id.* In resolving COMELEC's motion for reconsideration, this Court made its directive to COMELEC clear:

The COMELEC implemented this directive and issued guidelines that the VVPAT must be printed in the form of paper receipts and that the voters can verify their votes through these receipts. The voters were also allowed to register their objections in case of discrepancies with their actual votes. Apropos is Section 73 of the COMELEC Resolution No. 10460, thus:

SEC. 73. Manner of Voting. —

a. The voter shall:

1. Using a ballot secrecy folder and the marking pen provided by the Commission, accomplish the ballot by *fully shading the oval* appearing before the names of the candidates and the organizations participating in the party-list system of representation; and

2. After accomplishing the ballot, insert the ballot in the VCM's ballot entry slot, after which the voter shall return the ballot secrecy folder and the marking pen to the third member;

b. The EB third member shall position/stand beside the VCM without being able to view the screen, but near enough to be able to perform the following:

1. Monitor the VCM to ensure that the ballot is successfully accepted and the VVP AT is printed. Every time the end-of-roll color indicator appears, the third member shall replace the thermal paper;

WHEREFORE, the Commission on Elections' Motion for Reconsideration dated March 11, 2016 filed by respondent Commission on Elections is **DENIED WITH FINALITY**, the basic issues raised having previously been duly considered and passed upon by this Court in its Resolution dated March 8, 2016.

The Writ of [*Mandamus*] issued in Resolution dated March 8, 2016 must be fully implemented for the upcoming elections. The Commission on Elections is ordered to enable the vote verification feature of the vote counting machines, which prints the voter's choices without prejudice to the issuance of guidelines to regulate the release and disposal of the issued receipts as well as other measures that it deems necessary to ensure clean, honest, and orderly elections such as, but not limited to, ensuring that after voter verification, receipts should be deposited in a separate ballot box and not be taken out of the precinct. *Id.* at 10.

2. Fold the VVPAT in such a way that its contents cannot be seen, and then cut the end of the VVPAT using non-pointed scissors; and

3. Apply indelible ink to the voter's right forefinger nail or any other nail if there be no forefinger nail, and give the VVPAT to the voter for review;

c. The EB shall ensure that only the voter can read the VVPAT and advise the voter that bringing of the VVPAT outside the polling place shall constitute as an election offense. For this purpose, the box containing the Official Ballots shall serve as the VVPAT receptacle which shall be placed in an area visible to the EB members/ support staff/citizens' arm, watchers and other persons allowed inside the polling place.

The EB shall ensure that all Official Ballots are removed from the box before the same is used as a VVPAT receptacle. The VVPAT receptacle shall be properly sealed using the packaging tape, on which the EB and watchers, if any, shall affix their names and signatures.

d. The EB shall instruct the voter to go near the VVPAT receptacle located beside the VCM, and verify the votes as appearing on the VVPAT, drop the same in the VVPAT receptacle and leave the polling place.

e. In case an objection is raised by the voter on how the VCM reads the ballot, the chairperson shall:

1. Instruct the voter to affix his signature at the back of the VVPAT;

2. Note the specific objection in the Minutes; and

3. Attach the VVPAT to the Minutes (copy for the Ballot Box).

The objection shall be raised before the VVPAT is dropped in the VVPAT receptacle.

The filing of frivolous objections shall constitute an election offense punishable under the Omnibus Election Code. For this purpose, the EB is allowed to administer oaths so that if the protest is frivolous, falsification or perjury charges may be filed.

f. At the close of polls, the EB shall then place the VVPAT receptacle inside the ballot box. (Emphases supplied.)

In stark contrast, the petitioners and intervenors did not establish the legal basis of the proposed "*camerambola*" solution. They merely want to **audit all VVPATs immediately after the elections** and compare it with the election results but are silent on the intended purpose and how COMELEC should mobilize the volunteers and watchers nationwide to conduct this audit. On this score, the conduct of a random manual audit is sufficient to determine whether there are discrepancies between the manual count and the automated count, *viz.*:

> **SEC. 29. Random Manual Audit.** — Where the AES is used, there shall be a random manual audit **in one precinct per congressional district randomly chosen by the Commission in each province and city**. Any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error.[53] (Emphasis supplied.)

The COMELEC Resolution Nos. 10458 and 10525 provide that at least one clustered precinct in every legislative district shall be randomly selected to determine whether there is a discrepancy between the automated and manual count of votes and to determine the root cause of discrepancies, if any. In this audit, VVPAT serves as an essential tool to reconcile any discrepancies between the manual count and machine count, thus:

> RESOLUTION NO. 10525
>
> **SEC. 4. —** ***Number Precincts to be Randomly Selected for the RMA*****.** At least one clustered precinct in every legislative district shall be randomly selected for the RMA.
>
> The actual number of precincts to be selected in a legislative district shall be determined by proportional allocation, that is, based on the number of clustered precincts a legislative district has in proportion to that of all the other legislative districts in the country.
>
> The COMELEC, upon the recommendation of the RMAC, shall decide on the maximum total number of clustered precincts to be

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[53] RA No. 8436, as amended by RA No. 9369.

selected based on statistical sampling principles and taking into consideration resources available.

For purposes of the 13 May 2019 National and Local Elections, the maximum total number of clustered precincts to be selected shall not be more than seven hundred and fifteen (715).

Once the maximum total number of clustered precincts to be selected is determined, COMELEC shall approve the proportional allocation of the actual number of clustered precincts to be selected in each legislative district based on the recommendation of the PSA. The approval on the proportional allocation shall be made not later than ninety (90) days before the election.

SEC. 15. ***Manner of Counting of Votes.*** — x x x

k. In case the RMA results do not match the AES results, the RMAT members shall review all ballots and the corresponding entries in the Audit Returns for purposes of excluding the possibility of human error.

After determination that human error was not committed as having caused the discrepancy, the Chairman shall determine if the total number of VVPAT receipts is equal to the total number of valid ballots. If so, the RMAT members shall use the VVPAT receipts to count the votes counted in favor of the candidate with the reported discrepancy/ies.

SEC. 18. - *Discrepancy between AES and RMA*. - In the event that the RMAT reports a discrepancy between the AES and RMA results which exceeds the allowable margin of an aggregate difference of ten (10) votes, the RMA-VT shall:

x x x x

e. In the event of a finding that the discrepancy exists or is not due to mere mathematical error, the RMAC shall turn over the ballot box to the Technical Evaluation Committee (TEC) **for determination of the root cause in case the finding is that the discrepancy is valid**. (Emphases supplied.)

Verily, the random manual audit should have satisfied petitioners and intervenors' concern about possible discrepancies between the machine and manual count of votes. If they are apprehensive about the sample size of audited precincts in a legislative district, then the recourse is not with COMELEC

but with Congress to amend Section 29 of RA No. 8436, as amended.

The petitioners and intervenors also failed to show that the prohibition of using capturing devices in COMELEC Resolution No. 10460 is unlawful. It is true that Section 179 of the Omnibus Election Code allows poll watchers to use capturing devices at different stages of the election process except when voters are casting their votes, to wit:

> SEC. 179. Rights and duties of **watchers**. — x x x The watchers shall have the right to stay in the space reserved for them inside the polling place. They shall have the right to witness and inform themselves of the proceedings of the board of election inspectors, including its proceedings during the registration of voters, to take notes of what they may see or hear, **to take photographs of the proceedings and incidents, if any, during the counting of votes, as well as of election returns, tally boards and ballot boxes**, to file a protest against any irregularity or violation of law which they believe may have been committed by the board of election inspectors x x x (Emphasis supplied.)

These rights and duties are reiterated and clarified in Section 46 of COMELEC Resolution No. 10460 for the 2019 National Elections, thus:

> **SEC. 46. Rights and Duties of Watchers**. — x x x
>
> x x x x
>
> The watchers shall have the right to:
>
> a. Stay in the space reserved for them inside the polling place, except under the last paragraph of Section 44 of this Resolution;
>
> b. Witness and inform themselves of the proceedings of the EB;
>
> c. Take note of what they may see or hear;
>
> d. **Take picture, image or photo of the proceedings and incidents, if any, during testing and sealing, counting of votes, transmission and printing of election returns provided the secrecy of the ballot shall be maintained at all times. *In no case* shall taking of pictures, images or photos be allowed during casting of votes;**

e. File a protest against any irregularity or violation of law which they believe may have been committed by the EB or by any person present;

f. Obtain from the EB a certificate as to the filing of such protest and/or the Resolution thereof; and

g. Position themselves behind the chairperson of the EB in such a way that they can read the election returns while the chairperson is publicly announcing the precinct results.

x x x x (Emphases supplied.)

Contrary to petitioners' claims, the poll watchers can still register their protest on any irregularity and use capturing devices during the counting of votes and the transmission and printing of election returns, which will help them record their observations. However, they are prohibited from using these devices during the casting of votes to observe the constitutional policy of securing ballots' secrecy and sanctity.[54] The prohibition is consistent with the Omnibus Election Code, which considers it unlawful for any person to avail of any scheme to discover the contents of the ballots of a voter:

OMNIBUS ELECTION CODE

SEC. 261. Prohibited Acts. — The following shall be guilty of an election offense:

x x x x

(z) On voting:

x x x x

(5) Any person who avails himself of any means of scheme to discover the contents of the ballot of a voter who is preparing or casting his vote or who has just voted.

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[54] CONSTITUTION, Art.V, Sec. 2. This section provides that "[t]he Congress shall provide a system for securing the secrecy and sanctity of the ballot as well as a system for absentee voting by qualified Filipinos abroad." See RA No. 8436, as amended, Sec. 1.

Notably, the VVPAT reflects the votes of a voter. Allowing the poll watcher or even the voters to take a picture of their VVPATs during the casting of votes may run contrary to the constitutional policy of keeping the ballots' secrecy and sanctity. The COMELEC may adopt measures to prevent this from happening. In their attempt to show that poll watchers are prohibited from using capturing devices even during the counting of votes, the petitioners and intervenors point to the prohibition **imposed on voters** instead, which includes the phrase "*for whatever purpose*." This claim is misleading because they are referring to COMELEC Resolution No. 10088, which served as guidelines for the 2016 National Elections. Yet, the COMELEC Resolution No. 10460 for the 2019 National Elections already removed the phrase "*for whatever purpose*:"

Resolution No. 10088 (2016 NLE)	Resolution No. 10460 (2019 NLE)
SEC. 2. Section 20 (a) and (f) of Resolution No. 10057 are hereby amended to read as follows: "SEC. 20. Prohibitions on voting. — It shall be unlawful for a voter to: x x x x f) Use capturing devices, including, but not limited to, digital cameras or cellular phones **for whatever purpose while inside the polling place**[.]" (Emphasis supplied.)	SEC. 64. Prohibitions on Voting. — It shall be unlawful for a voter to: x x x x (f) Use of capturing devices such as but not limited to digital cameras, cellular phones with camera, **or other means to copy the contents of the ballot, or otherwise make use of any other scheme to identify his vote[.]** (Emphasis supplied.)

More importantly, the *Capalla* ruling is clear that the PCOS machines are capable of digitally-signed transmissions, as can be distilled from the clarificatory questions of former Associate Justice Antonio Carpio and Atty. Lazatin's response. A digital signature requires private and public keys. In the case of PCOS machines, algorithms generate these keys and the method of

comparing these keys. The private key in the electronic transmission of results and the public key possessed by COMELEC must match to consider the electronic transmission of results as an official election return. The private key is generated when the members of the electoral board use their respective *iButtons* and input their respective PINs on the voting machines. Although *Capalla* discussed PCOS machines' capability, the procedure concerning *iButtons* and PINs remains the same in the 2019 National Elections using VCMs. As such, the authentication process of electronically transmitted results is compliant with jurisprudence.

Yet, the petitioners and intervenors insist that *Capalla* was not categorical whether the requirement of digital signatures was complied with using the *iButtons* and PINs. The gist of their contention is that the *iButtons* and PINs should not be considered as the electoral board members' electronic signatures because they are machine identifiers and are not personal to the EB members. The recent case of *Bagumbayan-VNP Movement, Inc. v. COMELEC*[55] already addressed these contentions in ruling that the *iButtons* and PINs are the functional equivalents of the signatures of the members of the electoral board, to wit:

> The Court rules that the electronic transmission through the method promulgated by the COMELEC, as well as the authentication of the results, are valid under the law. According to A.M. No. 01-7-01-SC, or the Rules on Electronic Evidence, promulgated by the Court and alluded to with regard to the above mentioned authentication process, a "digital signature" refers to an electronic signature consisting of a transformation of an electronic document or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic document and the signer's public key can accurately determine: (i) whether the transformation was created using the private key that corresponds to the signer's public key; and (ii) whether the initial electronic document had been altered after the transformation was made, and that for purposes of the Rules, a digital signature is considered an electronic signature.

[55] G.R. Nos. 206719, 206784, and 207755, April 10, 2019.

An electronic signature is likewise defined as "any distinctive mark, characteristic and/or sound in electronic form representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedure employed or adopted by a person and executed or adopted by such person with the intention of authenticating, signing or approving an electronic data message or electronic document."

As gleaned from the wording of the law, the signature may be any distinctive mark or characteristic that represents the identity of a person. Thus, a machine signature of a PCOS machine may validly be considered the functional equivalent of the aforementioned "digital signature," as it represents the identity of the individual, said signature naturally being created specifically for the person him or herself inputting the details.

It is critical to note that the Court *En Banc* has already recognized that the PCOS machines produce digital signatures. In *Archbishop Capalla,* the Court clarified during the oral arguments that there is no infirmity as regards the signature of a PCOS machine being the equivalent of a digital signature. The Court, in that case, categorically stated that the PCOS machines produce digitally-signed signatures, and the Court sees no need to disturb that finding absent any compelling evidence to the contrary adduced by the petitioners. (Emphases supplied; citations omitted.)

Taken together, the petitioners and intervenors failed to prove that the COMELEC unlawfully neglected any duty enjoined by law. The adoption of the "*camerambola*" solution, or another method to digitally sign the election results, or policies regarding the use of capturing devices are all suggestions subject to the COMELEC's sound judgment. The exercise of discretion on how to implement the chosen AES must be accorded with the presumption of regularity and should be respected.[56] In *Sumulong v. COMELEC*,[57] the Court highlighted COMELEC's role as an independent constitutional body:

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[56] See *Aratuc v. COMELEC*, 177 Phil. 205, 224 (1979).

[57] 73 Phil. 288 (1941).

The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. **The Commission may err, so may this court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created — free, orderly and honest elections. We may not agree fully with its choice of means, but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere.** Politics is a practical matter, and political questions must be dealt with realistically — not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions.

x x x x

There are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws relative to the conduct of elections, as well as in the appointment of election inspectors, we must not by any excessive zeal take away from the Commission on Elections the initiative which by constitutional and legal mandates properly belongs to it. Due regard to the independent character of the Commission, as ordained in the Constitution, requires that the power of this court to review the acts of that body should, as a general proposition, be used sparingly, but firmly in appropriate cases. We are not satisfied that the present suit is one of such cases.[58] (Emphasis supplied.)

At any rate, the petition for mandamus is dismissible for being moot and academic.

Lastly, the petition for *mandamus* is dismissible on the ground of mootness. A case becomes "moot" when it ceases to present a justiciable controversy by supervening events so that a

[58] *Id.* at 294-296.

declaration thereon would be of no practical use or value.[59] Here, the conclusion of the 2019 National Elections rendered the petition academic. The issues on the absence of digital signatures, prohibition on the use of capturing devices, and adoption of the "*camerambola*" solution, are part of the election day proceedings and refer to the chosen AES system implemented for that particular election. The prayer to compel the COMELEC to make an inventory of the list of MAC[60] and IP[61] addresses is likewise mooted. This relief will serve no practical purpose because it was intended to be implemented during the transmission of results in the 2019 National Elections to avoid data interception and ensure that the COMELEC can only receive data from its recognized devices. It will also be impractical to require the submission of the devices' MAC addresses for purposes of future elections. The Court cannot preempt the COMELEC's choice on which AES should be implemented and whether the same devices will be used again in subsequent elections.[62] These data issues are impermanent as they can change with technological progression dependent to the necessity at a given time. In *Vitangcol III v. COMELEC*,[63] we dismissed similar petition for being moot and academic after the 2016 National Elections, thus:

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[59] *So v. Hon. Tacla, Jr.*, 648 Phil. 149, 163 (2010), citing *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006).

[60] MAC or Media Access Control address refers to a unique identifier assigned to a network device. It is made up of six two-digit hexadecimal numbers separated by colons. It is permanently embedded on the device and assigned by the vendor or manufacturer of the device. MAC Address, the Tech Terms Dictionary. Accessed on August 25, 2020 at https://techterms.com/definition/macaddress.

[61] IP or Internet Protocol address is a unique address that enables a network device to communicate with and locate other devices within the same network. IP Address, the Tech Terms Dictionary. Accessed on August 25, 2020 at https://techterms.com/definition/ip_address.

[62] See Republic Act No. 8436, Section 5.

[63] (Notice), G.R. No. 224027, October 11, 2016.

According to the petitioners, when polls close on May 9, 2016, the VCMs would transmit the election returns to the COMELEC central server, the transparency server, and the server at the Joint Congressional Canvassing. Elections results would also be transmitted to the appropriate municipal, provincial and national canvassing centers. During such transmissions, however, data may be compromised. Hackers could intercept (thru sniffing), alter, and send the altered data to canvassing centers and COMELEC servers without any traces that such data had already been tampered. To prevent this, **petitioners pray to compel the COMELEC to make an inventory of all the MAC and IP addresses of all its electronic devices, as well as IMSI and IMEI of all its communication devices, that would be used in the May 9, 2016 elections.** That way, the recipients of the data, particularly the COMELEC, could crosscheck whether the data they received actually came from COMELEC-recognized devices.

The conclusion of the May 9, 2016 elections, however, mooted the issues raised in these Petitions. In addition, it should be noted that IP addresses are not permanent. Internet Service Providers (ISP) can change it from time to time. Connecting to the internet thru different ISPs also results in the change of IP addresses. In other words, the IP addresses used relative to the May 9, 2016 will no longer be the same IP addresses that will be used in the subsequent elections. The same goes true for the MAC address and IMEI. While these identifying codes are permanently embedded on electronic devices, no one knows, at this point, whether the COMELEC will utilize the same electronic devices for the same precincts in future elections.[64] (Emphases supplied; citation omitted.)

On a final note, the COMELEC exercised its judgment to ensure free, orderly and honest elections and to protect the secrecy and sanctity of ballots without grave abuse of discretion. To be sure, the Court will not hesitate to exercise its jurisdiction to compel the performance of a duty provided by law in appropriate cases.[65]

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[64] *Id.*

[65] See *Bagumbayan-VNP Movement, Inc.*, *supra* note 7, at 1319; *Guingona, Jr. v. COMELEC*, *supra* note 37, at 530-511; *Center for People Empowerment in Governance v. COMELEC*, 645 Phil. 293 (2010).

FOR THESE REASONS, the petition is **DISMISSED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 246760-61. December 9, 2020]

SERMAN COOPERATIVE, *Petitioner, v.* **ANNALYN E. MONTARDE, JORDAN A. ALMAZAN, DANILO A. VALENCIA, CHRIS JOSEPH B. ENAR, RENANTE B. RIVAREZ, JORGE A. GREGORIO, GERALD S. FAJARDO, MARCELINO T. LUCERO, MICHAEL A. MALABANAN, ROMEO JUNIOR E. GAGANTE, LORELYN C. TENGCO, FE L. MARTINEZ, AMIE P. DE GUZMAN, MYLENE D. QUINTOS, NELIA I. ORLIGA, ERICK S. PONTIPEDRA, FREDERICK M. PEREZ, STEPHEN C. FORTUNA, RICK V. ARROYO, AND EDDIE T. LACASANDILE,** *Respondents*.

[G.R. Nos. 246764-65. December 9, 2020]

WYETH PHILIPPINES, INC., *Petitioner, v.* **ANNALYN E. MONTARDE, JORDAN A. ALMAZAN, DANILO A. VALENCIA, CHRIS JOSEPH B. ENAR, RENANTE B. RIVAREZ, JORGE A. GREGORIO, MICHAEL A. MALABANAN, ROMEO JUNIOR E. GAGANTE, MARCELINO T. LUCERO, GERALD S. FAJARDO, LORELYN C. TENGCO, FE L. MARTINEZ, NELIA I. ORUGA, AMIE P. DE GUZMAN, MYLENE D. QUINTOS, ERICK S. PONTIPEDRA, FREDERICK M. PEREZ, RICK V. ARROYO, EDDIE T. LACASANDILE, AND STEPHEN C. FORTUNA,** *Respondents*.

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D E C I S I O N

CARANDANG, *J.*:

Before this Court are two consolidated petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated June 26, 2018 and the Resolution[3] dated March 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 142600 and CA-G.R. SP No. 142631 filed by petitioners Serman Cooperative (Serman) and Wyeth Philippines, Inc. (Wyeth).

Antecedents

Wyeth is a company engaged in the manufacturing and sale of nutritional products for infants, children, and mothers. On various dates beginning April 2003 until December 2012, Wyeth entered into several service agreements[4] with Serman, a multipurpose cooperative engaged in the service of job contracting, manufacturing, marketing, and exporting of garments and other products. Under these agreements, Serman undertook to assign its personnel to Wyeth to render services such as sorting of finished goods, cartoning of sachets and finished goods, and preparing and dumping of raw materials. On different dates between 2006 and 2011, Serman deployed the following personnel to Wyeth as Production Helpers (collectively, workers):

NAME	DATE OF EMPLOYMENT
Annalyn E. Montarde	May 19, 2009
Jordan A. Almazan	December 18, 2010

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[1] *Rollo* (G.R. Nos. 246760-61), pp. 12-32; *rollo* (G.R. Nos. 246764-65), pp. 9-55.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with the concurrence of Associate Justices Ramon A. Cruz and Pablito A. Perez; *rollo* (G.R. Nos. 246760-61), pp. 94-115.

[3] Id. at 118-119.

[4] Id. at 96.

Danilo A. Valencia	April 16, 2006
Chris Joseph B. Enar	October 12, 2009
Renante B. Rivarez	January 13, 2006
Jorge A. Gregorio	November 5, 2006
Michael A. Malabanan	September 21, 2008
Romeo Junior E. Gagante	June 2, 2010
Marcelino T. Lucero	January 22, 2011
Gerald S. Fajardo	December 10, 2007
Lorelyn C. Tengco	June 9, 2009
Fe L. Martinez	June 30, 2009
Nelia I. Oruga	October 2, 2006
Amie P. De Guzman	June 9, 2009
Mylene D. Quintos	May 28, 2009
Erick S. Pontipedra	January 26, 2011
Frederick M. Perez	September 23, 2011
Stephen C. Fortuna	April 26, 2011
Rick V. Arroyo	October 4, 2011
Eddie T. Lacasandile	December 1, 2011[5]

On December 1, 2012, Wyeth entered into a Service Agreement[6] with Serman effective for a period of one (1) year commencing on December 1, 2012 until November 30, 2013. On even date, the workers executed their respective contracts of service[7] stating that their contracts shall be "co-extensive" with Serman's service agreement with Wyeth and shall automatically expire on November 30, 2013. At the instance of Wyeth, the duration of the Service Agreement was extended from December 1, 2013 to January 31, 2014.[8] Thus, on December 1, 2013, the workers executed their respective contracts stating that their contracts shall be co-extensive with

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[5] Id.

[6] *Rollo* (G.R. Nos. 246764-65), pp. 315-323.

[7] Id. at 438-440, 447-461, 465-473, 477-479, 482-485, 489-491, 495-497, 501-503, 507-509, 513-515, 519-521, 525-527, 530-532, 536-538, 542-544, 548-550, 554-556.

[8] Id. at 314.

Serman's service agreement with Wyeth and shall automatically expire on January 31, 2014.[9]

After the alleged expiration of their respective contracts, the workers, composed of several groups, filed their respective complaints[10] for illegal dismissal, regularization, damages, attorney's fees, capital share and dividend against Serman, Wyeth, and their respective officers.[11]

Montarde, Almazan, Valencia, Enar, Rivarez, Gregorio, Malabanan, Gagante, Lucero, Fajardo, Tengco, Martinez, Oruga, De Guzman, and Quintos (collectively, Montarde Group) maintained that on January 29, 2014, Arnel Calleja (Calleja), Serman's supervisor, confiscated their Serman Identification Cards and Wyeth Access Cards and instructed them not to report to Wyeth due to the expiration of their contract. The Montarde Group insisted that they were illegally dismissed from employment because there was still an existing contract between Serman and Wyeth. They further claimed that Wyeth acted in bad faith because it resorted to labor-only contracting to prevent them from attaining regular status.[12]

Pontipedra, Perez, Fortuna, Arroyo, and Lacasandile (collectively, Pontipedra Group) claimed that they were illegally dismissed after an incident on January 17, 2014. They averred that on January 17, 2014, they went out of the compounding area to change their uniforms in the locker room and sign their attendance in the presence of Syril Paingas (Paingas), another supervisor of Serman. When they returned to their posts, Ed Laygo (Laygo), Wyeth's supervisor, allegedly questioned why it took them a long time to return to their posts. Calleja and Paingas instructed them not to report to Wyeth and proceed

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[9] Id. at 441-446, 462-464, 474-476, 480-481, 486-488, 492-494, 498-500, 504-506, 510-512, 516-518, 522-524, 528-529, 533-535, 539-541, 545-547, 551-553.

[10] Id. at 756-770.

[11] Id.

[12] Id. at 97-98.

instead to Serman's office. They were allegedly given a blank sheet of paper and were directed to make an incident report but they refused. Instead, they asked for a "memo or termination letter." On the same day, they were issued a Member-Worker Notice[13] requiring them to explain why a pre-termination of their contract should not be undertaken for leaving their posts without permission from their immediate superior. The Pontipedra Group alleged that they were dismissed without any legal basis and that they were not accorded procedural due process.[14]

Ruling of the Labor Arbiter

In a Decision[15] dated November 17, 2014, Labor Arbiter (LA) Napoleon V. Fernando dismissed the complaint for illegal dismissal and regularization for lack of merit.[16] The LA found Serman fully compliant with the requirements for legitimate job contracting.[17] The LA further held that workers' assignment at Wyeth mainly consisted of support services in their capacity and designation as production helper. The LA concluded that Serman undertook the contracted services on its own, and assumed full responsibility over its outcome, free from the control of Wyeth.[18]

With regard to the orientation seminar conducted by Wyeth before the workers assumed their duties, the LA did not consider it an indication of control Wyeth exercised over them. It was found to be a reasonable measure to maintain the quality and cleanliness of its products.[19]

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[13] Id. at 873-880.

[14] Id. at 98-99.

[15] Penned by Labor Arbiter Napoleon V. Fernando; *rollo* (G.R. Nos. 246760-61), pp. 41-67.

[16] Id. at 67.

[17] Id. at 62-63.

[18] Id. at 64.

[19] Id.

In holding that the workers were not illegally dismissed, the LA held that the deployment of the Montarde Group at Wyeth ended as a result of the expiration of the Service Agreement between Wyeth and Serman. This is also true in the case of the Pontipedra Group who, after having been required by Serman to explain their unauthorized departure from the place of their assignment, failed to return to Serman's office to submit their explanation.[20]

Ruling of the National Labor Relations Commission

On May 29, 2015, the National Labor Relations Commission (NLRC) rendered its Resolution,[21] the dispositive portion of which states:

> WHEREFORE, premises considered, the Decision dated 17 November 2014 is hereby **MODIFIED** ordering respondent-appellee Serman Cooperative to pay complainants-appellants their separation benefits for the duration of their employment contracts co-terminus with the Service Agreements with respondent-appellee Wyeth.
>
> SO ORDERED.[22]

In modifying the ruling of the LA, the NLRC found that an employer-employee relationship exists between the workers and Serman.[23] The NLRC considered the workers as fixed-term employees whose respective employment were terminated due to the expiration of their contracts. Thus, the NLRC ruled that there was no illegal dismissal.[24]

The motion for reconsideration of the workers was denied in a Resolution dated August 12, 2015.[25]

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[20] Id. at 66.

[21] Penned by Commissioner Pablo C. Espiritu, Jr. with the concurrence of Presiding Commissioner Alex A. Lopez; id. at 69-88.

[22] Id. at 87.

[23] Id. at 84-85.

[24] Id. at 86.

[25] Penned by Commissioner Pablo C. Espiritu, Jr. with the concurrence of Presiding Commissioner Alex A. Lopez; id. at 90-91.

Ruling of the Court of Appeals

On June 26, 2018, the CA rendered its Decision,[26] the dispositive portion of which reads:

> ***WHEREFORE***, the Resolutions dated 29 May 2015 and 12 August 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000558-15 are ***REVERSED*** and ***SET ASIDE***. Wyeth Phils., Inc. is hereby ordered to reinstate the complainants-appellants without loss of seniority rights and other privileges, namely: Annalyn E. Montarde, Jordan A. Almazan, Danilo A. Valencia, Chris Joseph B. Enar, Renante B. Rivarez, Jorge A. Gregorio, Michael A. Malabanan, Romeo Junior E. Gagante, Marcelino T. Lucero, Gerald S. Fajardo, Lorelyn C. Tengco, Fe L. Martinez, Nelia I. Oruga, Amie P. De Guzman, Mylene D. Quintas, Erick S. Pontipedra, Frederick M. Perez, Stephen C. Fortuna, Rick V. Arroyo, and Eddie T. Lacasandile, Wyeth Phils., Inc. and Serman Cooperative are ordered to pay, jointly and severally, their full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation is withheld up to the time of their actual reinstatement. Accordingly, the instant case is ***REMANDED*** to the Computation Department of the Labor Arbiter for the computation of the foregoing awards.
>
> ***SO ORDERED.***[27] (Emphasis and italics in the original)

The CA ordered Wyeth to reinstate the workers without loss of seniority rights and other privileges. Wyeth and Serman were ordered to pay, jointly and severally, their full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement. The case was remanded to the Computation Department of the Labor Arbiter for the computation of the monetary award.[28]

In reversing the NLRC, the CA held that the evidence adduced by Wyeth merely proved that Serman was financially qualified

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[26] Supra note 2.

[27] Id. at 115.

[28] Id.

as a legitimate contractor only with respect to its service agreements with Wyeth in 2009 to 2012 through their financial statements for the years 2009 to 2013.[29] The workers assigned at the compounding area were performing jobs that were necessary and desirable to the operations of Wyeth and were indispensable to the operations of Wyeth because they ensured the safety of Wyeth's products by checking the expiration dates and the condition of the sachets. They were also responsible for cartoning the sachets for distribution and exportation.[30] Also, the repeated and continuing need to rehire the workers is sufficient evidence of the necessity, if not indispensability, of their work to the business of manufacturing and distribution of milk products.[31]

The CA observed that various provisions of the Service Agreement reveal the extent of Wyeth's involvement in the supervision and control of the workers' performance.[32] The CA pointed out that the power to dismiss workers, in the guise of a request to recall and change any undesirable or erring personnel, is the strongest indication of Wyeth's power of control as a direct employer.[33]

The CA declared Wyeth as the real employer of the workers who are considered regular employees pursuant to Article 280 of the Labor Code.[34] Considering that they are regular employees of Wyeth, their employment may only be terminated for just or authorized causes under the Labor Code. As the supposed expiration of the Service Agreement does not constitute just or authorized causes which would justify their dismissal, and there was no compliance with the twin requirements of notice and hearing, the workers were illegally dismissed from

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[29] Id. at 106.

[30] Id. at 108-109.

[31] Id. at 109.

[32] Id. at 111.

[33] Id.

[34] Id. at 112.

employment. Thus, the CA concluded that they are entitled to reinstatement without loss of seniority of rights and other privileges and to their full backwages inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement.[35]

The motions for reconsideration Serman and Wyeth respectively filed were denied in a Resolution dated March 28, 2019.[36]

In the petition[37] docketed as G.R. Nos. 246760-61, Serman maintains that, other than unloading raw materials, the workers were not in any way involved in the operation of Wyeth's machines, thus making their task not necessary or desirable to the business of Wyeth.[38] Assuming *arguendo* that dumping of raw materials is considered necessary or desirable to Wyeth's operations, Serman insists that this should not be the sole consideration in classifying it as a labor-only contractor. Serman argues that it exercises power of supervision and control over the workers as manifested *inter alia* in the preparation of work schedules, evaluation of work performance, discipline of workers, preparation of payroll, and payment of SSS, PhilHealth, and Pag-IBIG remittances.[39] Serman also stresses that the workers were not illegally dismissed because the termination of their employment was caused by the expiration of the Service Agreement between Serman and Wyeth.[40]

Meanwhile, in the petition[41] docketed as G.R. Nos. 246764-65, Wyeth argues that: (1) Serman had sufficient proof of its

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[35] Id. at 113, 115.

[36] Supra note 3.

[37] *Rollo* (G.R. Nos. 246760-61), pp. 12-32.

[38] Id. at 22-23.

[39] Id. at 25-29.

[40] Id. at 30.

[41] *Rollo* (G.R. Nos. 246764-65), pp. 9-55.

substantial capitalization;[42] (2) the workers were not performing jobs that were necessary and desirable to the operations of Wyeth;[43] (3) Wyeth did not have control over the workers' performance of their tasks;[44] and (4) the workers are not regular employees of Wyeth.[45]

Thereafter, upon recommendation of the Division Clerk of Court, the petitions were consolidated.[46]

In their Consolidated Comment,[47] the workers maintain that: (1) Serman did not possess substantial capital and ownership of the tools, equipment, and machineries as contemplated in Section 4 (b) of Department Order (D.O.) No. 18-A;[48] (2) the duties of the workers are directly related, necessary or desirable to the manufacturing business of Wyeth;[49] and (3) Wyeth exercised control over the performance of the workers' tasks.[50]

The Issues

The issues to be resolved are:

1. Whether Serman is engaged in labor-only contracting, thus making the workers regular employees of Wyeth; and
2. Whether the workers were illegally dismissed from their employment.

Ruling of the Court

The petitions are not meritorious.

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[42] Id. at 25-27.

[43] Id. at 27-35.

[44] Id. at 35-46.

[45] Id. at 46-53.

[46] *Rollo* (G.R. Nos. 246760-61), p. 125.

[47] Id. at 163-172.

[48] Id. at 165.

[49] Id. at 165-169.

[50] Id. at 170-172.

Labor-only contracting is defined in Article 106 of the Labor Code as follows:

> Article 106. *Contractor or Subcontractor*. — x x x
> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.[51]

The policy of the State in prohibiting labor-only contracting is found in Department of Labor and Employment (DOLE) D.O. No. 18-A-11 which provides:

> Section 6. *Prohibition Against Labor-only Contracting*. — Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:
> (a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or
> (b) The contractor does not exercise the right to control over the performance of the work of the employee.[52]

In resolving the issues presented before Us, it is worthy to point out the recent ruling of the Court in the case of *Alaska Milk Corporation v. Paez*,[53] which also involved production

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[51] Article 106, Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered).

[52] *Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, DOLE Department Order No. 18-A-11, November 14, 2011.*

[53] G.R. Nos. 237277 and 237317, November 27, 2019.

line helpers performing post-production tasks such as packaging of finished products, preparing raw materials, and monitoring of the release of defective products. These production helpers claimed to be regular employees of Alaska Milk Corporation (Alaska), a manufacturer of dairy products. The Court ruled that the production line helpers are employees of the job contractor, Asiapro Multipurpose Cooperative (Asiapro), responsible for deploying them. While Asiapro was not registered, it was able to prove that it possessed substantial capital and exercised control over the means and methods used by its workers-members in carrying out their duties. On the other hand, Alaska's other job contractor, 5S Manpower Services was considered a labor-only contractor after it failed to prove that it possessed substantial capital or investments as the record is bereft of any financial statements revealing its paid-up capital. The Court considered the following factors: (1) possession of substantial capital or investment; and (2) the job contractor's exercise of control and supervision over the workers.[54]

In the present case, Serman has established that it is a duly-registered job contractor in compliance with D.O. No. 18-02, series of 2002. Serman has been registered with the DOLE as reflected in the certificates of registration issued on May 30, 2006,[55] May 19, 2009,[56] and June 26, 2012.[57] Nevertheless, the fact of registration simply prevents the presumption of being a mere labor-only contractor from arising. In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case should be considered.[58]

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[54] Id.

[55] *Rollo* (G.R. Nos. 246764-65), p. 295.

[56] Id. at 294.

[57] Id. at 293.

[58] *San Miguel Corporation v. Semillano,* 637 Phil. 115, 130 (2010).

Serman failed to prove that it possesses substantial capital or investment as contemplated in D.O. No. 18-A-11 to be considered a legitimate job contractor.

The term "substantial capital" was only defined on November 14, 2011, when the amendments to D.O. No. 18-02, series of 2002 was reflected in D.O. No. 18-A-11, series of 2011. It states that:

(1) "Substantial capital" refers to **paid-up capital stocks/shares of at least Three Million Pesos (P3,000,000.00)** in the case of corporations, partnerships and **cooperatives** in the case of single proprietorship, a net worth of at least Three Million Pesos (P3,000,000.00).[59] (Emphasis supplied)

In the present case, Serman failed to establish that it possesses the required capital as revealed in its financial statements. Wyeth attached to its petition financial reports[60] of Serman showing the following information:

YEAR	ASSETS	PAID-UP CAPITAL	CAPITAL BUILD-UP
2004	P2,693,693.93	P176,000.00	P175,600.00
2005	P3,340,144.39	P182,500.00	P246,400.00
2006	P5,510,544.01	P202,500.00	P323,450.00
2007	P8,301,104.55	P308,500.00	P398,700.00
2008	P9,030,759.54	P238,000.00	P559,600.00[61]

Following the implementation of D.O. No. 18-A-11, Serman adopted changes to its Articles of Cooperation with the intention of complying with its capitalization requirement. These changes were explained in Serman's Notes to Financial Statements (as of and for the years ended December 31, 2013 and 2012; and

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[59] Rules Implementing Articles 106 to 109 of the Labor Code, as Amended, DOLE Department Order No. 18-A-11, November 14, 2011.

[60] *Rollo* (G.R. Nos. 246764-65), pp. 122-165.

[61] Id.

as of and for the years ended December 31, 2014 and 2013), the pertinent portion of which is quoted below:

14. Share capital
On December 9, 2011, a Special General Assembly Meeting was held to amend the Articles of Cooperation of the Cooperative, in particular Article IX Capitalization, for the Cooperative to comply with the new Department Order No. 18-A of the Department of Labor and Employment in order to re-register the Cooperative as an independent job contractor.
The following amendment in the Articles of Incorporation of Cooperative was unanimously approved by at least two-thirds (2/3) of all members with voting rights:
That the Authorized Share Capital of this Cooperative is Ten Million Pesos (P10,000,000.00). Philippine currency divided into:
1. Seven Thousand Five Hundred (7,500) common share with par value of One Thousand (1,000) per share;
2. Five Thousand (5,000.00) preferred shares with par value of Five Hundred Pesos (P500.00) per share.
On February 21, 2012, the above amendment to the Articles of Cooperation and By-laws of the Cooperative was approved by Cooperative Development Authority.[62]

A careful scrutiny of Serman's financial statements[63] would show that after the implementation of the amendments to Serman's Articles of Cooperation, the actual amount of paid-up capital for 2011 to 2014 are no longer available in its financial statements. Instead, the relevant information on its equity[64] declared in its financial statements are as follows:

YEAR	ASSETS	SHARE CAPITAL	DONATED CAPITAL	STATUTORY FUNDS
2011	P11,601,320.35	P3,301,000.00	P500,000.00	P2,152,537.58
2012	P11,836,930.10	P3,712,050.00	P500,000.00	P1,864,319.32
2013	P11,416,026.00	P3,882,350.00	P500,000.00	P1,682,006.00
2014	P11,312,070.00	P3,910,500.00	P500,000.00	P1,549,061.00[65]

[62] Id. at 185, 211.

[63] Id. at 166-215.

[64] Id. at 307, 194.

[65] Id.

Noticeably, while the share capital of Serman beginning 2011 was more than ₱3,000,000.00, it still failed to meet the required ₱3,000,000.00 paid-up capital requirement. Though both Serman and Wyeth filed their respective petition for review on *certiorari*, it was only Wyeth which attached to its petition the financial statements of Serman. However, a careful study of these financial statements reveal that there is no available information on the paid-up capital of Serman since the implementation of D.O. No. 18-A-11.

Assets, share capital, donated capital, and statutory funds cannot replace the paid-up capital requirement as these are separate and distinct accounting terminologies with differing purposes and implications on the financial standing of Serman. It is settled that a sum of assets, without more, is insufficient to prove that an entity is engaged in valid job contracting.[66] We cannot readily presume that the assets were those contemplated by D.O. No. 18-A-11 since Wyeth's allegation that Serman possesses substantial capital is not supported by the evidence on record.

Share capital refers to the money paid or required to be paid by the members for the conduct of the operation of the cooperative.[67] Meanwhile, paid-up capital pertains to the portion of the subscribed share capital which has been paid by the members of the cooperative.[68] 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.[69] Statutory funds or reserves refer to earnings of the cooperative allocated to various

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[66] Supra note 53.

[67] Cooperative Development Authority Memorandum Circular No. 2015-05, Series of 2015, paragraph (xii), Section 5; Rules and Regulations Implementing Certain Provisions of the Philippine Cooperative Code of 2008, Section 2.

[68] Rules and Regulations Implementing Certain Provisions of the Philippine Cooperative Code of 2008, Section 2.

[69] Id.

statutory accounts such as: (a) Reserved fund; (b) Education and training fund; (c) Community development Fund; and (d) Optional fund.[70]

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.

D.O. No. 18-A-11 requires at least ₱3,000,000.00 paid-up capital for cooperatives to give rise to the presumption that one is engaged in permissible job contracting. As the parties claiming to be engaged in legitimate job contracting, Wyeth and Serman bear the onus of proving their claim. Though the financial statements of Serman for 2004 up to 2008 included information regarding the amount of its paid-up capital, this information is noticeably absent in Serman's financial statements beginning 2011. Hence, Wyeth and Serman failed to establish that the latter had sufficient capital as contemplated by the DO No. 18-A-11 to be considered a legitimate job contractor.

The workers performed duties and activities usually necessary or desirable to the manufacturing business of Wyeth.

In the service agreements entered into by Wyeth and Serman, the latter undertook to provide Wyeth with services which include:

1. Performs sorting of all finished Goods based on Request to Sort (RTS) recommended by the Quality Assurance Division.
2. Cartoning of 44g Sachets.
3. Cartoning of Finished Goods in Sachet packs for export requirements.

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[70] Philippine Cooperative Code of 2008, as amended, Republic Act No. 9520, Article 86.

4. Sieving of rework powder in the sieving section.
5. Tapping of sachets in the Packaging Section
6. Acts as reliever due to unscheduled absences. As Reliever, the following functions shall be performed:
    a. Preparation of bulk materials in the Macro Dispensing Section
    b. Dumping of bulk materials in the Compounding Section
7. In case of absence of a regular employee, assists other Operators in:
    a. Unwrapping and pushing of pallets of empty cans into the depalletizer infeed conveyor.
    b. Assists in the manual palletizing of finished products in case the automatic cartoner and palletizer bogs down.
    c. Observes the can blower and immediately notifies a regular employee in cases there are hammed cans in the conveyor. Pushes and emergency stop button to prevent further damage of the equipment.
8. During shutdown, assists the regular employees in the dismantling and cleaning of equipment in the filling room.
9. Quality Assurance Raw Materials Sampler — performs sampling on all new raw material deliveries, in house premixes and rework powder according to approved Standard Operating Procedures (SOPs) and specifications.
10. Provides support to WYETH programs such as follows:
    a. Team building
    b. Safety measures
    c. Survival training
    d. Disaster, emergency preparedness
    e. First-Aid[71]

It cannot be denied that the workers were performing duties and activities "usually necessary or desirable in the usual business or trade of the employer" pursuant to Article 280 of the Labor Code. The continuous rehiring of the employees negates the claim of Serman and Wyeth that the tasks the workers performed were only ancillary to the manufacturing business of Wyeth. Workers assigned at the compounding area are indispensable to the operations of Wyeth because they ensure the safety of Wyeth's products by checking the expiration dates and the condition of the sachets. They were also responsible for the

[71] *Rollo* (G.R. Nos. 246764-65), p. 325.

cartoning of the sachets for distribution and exportation. Furthermore, the repeated and continuing need to rehire complainants is sufficient evidence of the necessity, if not indispensability, of their work to the business of manufacturing and distribution of milk products.[72]

Admittedly, in performing the contracted out tasks, the parties specifically declared that:

> c. SERMAN shall be free to use any means and methods not contrary to law, regulations and the provisions and spirit of this Agreement, which it believes will best enable it to perform the Services. SERMAN shall not be subject to the control and supervision of WYETH insofar as the means and methods to be employed by SERMAN, it being understood that WYETH is interested only in the results of SERMAN work under this Agreement.[73]

In addition, Serman was required to assign its own personnel who will monitor the performance of the workers. The service agreement states:

> 3.5. SERMAN shall designate and make available to WYETH at all times a competent representative, who shall be part of SERMAN Personnel, with full authority to deal with WYETH on all matters pertaining to the implementation and enforcement of this Agreement and the performance of the Services. The representative shall coordinate with WYETH throughout the duration of this Agreement to ensure the accomplishment of WYETH's desired result.[74]

However, despite the cited provisions, the underlying authority to choose who may continue to perform the contracted out tasks still lies with Wyeth. The service agreement provides:

> 3.6. SERMAN shall at all times maintain efficient and effective discipline over its Personnel. **WYETH shall have the right to report to SERMAN and protest any untoward act, negligence, misconduct, malfeasance, misfeasance or nonfeasance of any Personnel**. Although

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[72] Id. at 110.

[73] Id. at 316.

[74] Id. at 317.

SERMAN alone shall have the right to discipline the Personnel, **WYETH may request SERMAN to recall and change any undesirable or erring Personnel**. SERMAN shall not continue to assign any Personnel whose trustworthiness, dependability or efficiency is doubted by WYETH. SERMAN shall ensure that, at all times, the Personnel shall not commit any act prejudicial or injurious to the name, reputation, business, and interest of WYETH.[75] (Emphasis supplied)

To Our mind, Wyeth's right to recall erring workers and request for their replacement is a manifestation of Wyeth's control over them. The procedure in requesting for the recall of workers is actually an indirect exercise of Wyeth's power to dismiss workers deployed by Serman who fail to meet the former's standards. The extent of Wyeth's involvement in the supervision, control, and even the dismissal of the workers is a strong indication of Wyeth's control over them as a direct employer.

Under the "control test," the employer is the person who has the power to control both the end achieved by his or her employees, and the manner and means they use to achieve that end. In this case, it must be highlighted that Wyeth requires Serman to observe certain standards in the performance of the contracted out tasks through its Key Performance Indicators which include the following categories: (1) 100% Safety Compliance; (2) 100% Compliance on the eCGMP of the principal; (3) zero incidence of unauthorized tardiness and absences; and (4) zero incidence of rejection related to scope of work performance.[76] Requiring observance of these key indicators is considered a manifestation of Wyeth's exercise of control and supervision. Wyeth cannot be reasonably expected to simply allow the workers to perform the contracted out tasks without adherence to these standards considering that the business of manufacturing and sale of nutritional products for infants, children, and mothers requires strict quality control. It is settled that "it is not essential that the employer

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[75] Id.

[76] Id. at 443.

actually exercises the power of control, as the ability to wield the same is sufficient."[77]

The workers were constructively dismissed from their employment.

In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds. In the present case, suddenly instructing the Montarde Group not to report to work before the expiration of the service agreement and sanctioning the Pontipedra Group for allegedly leaving their post without permission, the timing of which is suspicious, constitute constructive dismissal. Serman and Wyeth failed to rebut the claim of the workers that they were illegally dismissed.

Considering that the workers are regular employees of Wyeth, their employment may only be terminated for just or authorized causes under the Labor Code. As the supposed expiration of the Service Agreement does not constitute just or authorized cause that would justify their dismissal, and there was no compliance with the twin requirements of notice and hearing, the workers were illegally dismissed from employment. Thus, they are entitled to reinstatement without loss of seniority of rights and other privileges and to their full backwages inclusive of allowances, and other benefits or their monetary equivalent computed from the time their compensation were withheld up to the time of their actual reinstatement.[78]

WHEREFORE, the petitions for review on *certiorari* of Serman Cooperative and Wyeth Philippines, Inc. are **DENIED**. The Decision dated June 26, 2018 and the Resolution dated March 28, 2019 of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

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

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[77] Supra note 53.

[78] *Rollo* (G.R. Nos. 246760-61), pp. 113, 115.

THIRD DIVISION

[G.R. No. 250418. December 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ROGER PADIN *y* TILAR,** *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

DELOS SANTOS, *J.*:

This is an appeal filed by Roger Padin *y* Tilar (accused-appellant) from the Decision[1] dated February 21, 2019 of the Court of Appeals (CA) in CA-G.R. CR HC No. 10101 denying the appeal from the Decision[2] dated October 27, 2017 of the Regional Trial Court (RTC) of [redacted], Branch 42, finding accused-appellant guilty beyond reasonable doubt of the crime of Rape.

Facts

In an *Information*[3] dated July 27, 2012, accused-appellant was charged with the crime of Rape, defined and penalized under paragraph 1 of Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended, in relation to Republic Act No. (RA) 7610,[4] against AAA,[5] committed as follows:

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon R. Garcia and Gabriel T. Robeniol, concurring; *rollo*, pp. 3-11.

[2] Penned by Acting Presiding Judge Lelu P. Contreras; CA *rollo*, pp. 43-52.

[3] Records, p. 1.

[4] Special Protection of Children Against Abuse, Exploitation and Discrimination Act, approved on June 17, 1992.

That on or about the 4th day of APRIL 2012 in the evening at [redacted], province of Catanduanes, and within the jurisdiction of this Honorable Court, the above[-]named accused, by means of force, threat and intimidation, with lewd design, did then and there willfully, unlawfully and feloniously, lie and have carnal knowledge of [AAA,] a child twelve (12) years of age, without her consent, which said acts debased, degraded or demeaned the intrinsic worth and dignity of said child victim as a human being, to her damage and prejudice.

CONTRARY TO LAW.[6]

The case was initially archived on April 5, 2013, and was revived on March 17, 2014, after accused-appellant's apprehension. Upon arraignment on March 28, 2014, accused-appellant entered a plea of not guilty to the charge. After the pre-trial conference, trial on the merits ensued.[7]

According to the prosecution, AAA was born on September 20, 1999. Accused-appellant was the live-in partner of BBB, AAA's mother, whom AAA called "Daddy." AAA sleeps in one room with her other siblings while accused-appellant and BBB, along with her youngest child, sleep in another room.[8]

On the evening of April 4, 2012, BBB was in [redacted], Catanduanes where she worked as a household helper. AAA, then 12 years old, was awakened when accused-appellant, who was then half-naked, removed her shorts and underwear and immediately laid on top of her. Accused-appellant inserted his finger into her vagina. Shortly thereafter, he removed his finger and replaced it with his penis, doing a "push-and-pull" movement. Out of fear, AAA just cried and did not resist nor shout for

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[5] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records and court proceedings are kept confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

[6] Records, p. 1.

[7] *Rollo*, p. 4.

[8] Id.

help. After raping AAA, accused-appellant removed his penis and without any word, left the room.[9]

While at work, BBB received a text message from an unknown sender, which reads: "*Gud pm. Nag alala lang ako kung pwede subaybayan mo ang asawa mo, kasi inaabuso ang anak mo na si* [AAA]." Thus, BBB rushed home to talk to AAA regarding the text message. Upon arrival at home, BBB summoned AAA and showed her the text message. It was only then that AAA divulged to her mother the repeated sexual abuses of accused-appellant.[10]

Two (2) days after, BBB went to the Barangay to seek advice and per recommendation, AAA was brought to Eastern Bicol Medical Center on April 9, 2012, at 6 o'clock in the morning, where she was examined by Dr. Monisita Genogaling-Lacorte (Dr. Lacorte), Medical Officer IV. The Medico-Legal Certificate[11] declared that AAA had: 1) an abrasion on the lower part of the labia minora (left) 0.5 cm x 0.5 cm; 2) lacerated wound 0.5 cm on the fourchette (left) at 5 o'clock position; and 3) ruptured hymen (admits 2 fingers). In sum, the findings were suggestive of penetration force to the hymen brought about by a firm object or penis.[12]

When informed of the result, BBB and AAA reported the incident to [redacted] Municipal Police Station. They executed their sworn statements which detailed the incident and thereafter filed a complaint against accused-appellant.[13]

In his defense, accused-appellant vehemently denied the charge against him. He claimed that in the morning of April 4, 2012, he just arrived from detention, brought about by another case for physical injuries filed against him by Nomeriano Oturdo

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[9] Id. at 4-5.

[10] Id. at 5.

[11] Records, p. 70.

[12] TSN, August 28, 2014, pp. 9, 14-15.

[13] *Rollo*, p. 5.

(Oturdo). When he arrived home, he inquired from AAA about BBB's whereabouts. AAA initially disclaimed knowing where BBB was and AAA was chastised by accused-appellant. AAA eventually told him that BBB was with Oturdo. Accused-appellant then called BBB and told her to go home. When BBB arrived, accused-appellant confronted her about what he heard from AAA which caused them to argue. That night, after BBB and accused-appellant reconciled, accused-appellant slept beside BBB while the children slept on BBB's other side, with AAA who was farthest from accused-appellant.[14]

The next day, BBB brought along AAA, hoping that her employer would allow AAA to replace her. Apparently, BBB took the opportunity to have AAA undergo medical examination and subsequently have accused-appellant arrested.[15]

CCC, AAA's younger brother, alleged that he never saw accused-appellant abuse AAA. He claimed that it was Oturdo, rather than accused-appellant, who raped AAA.[16]

RTC Ruling

The RTC found no iota of doubt in AAA's testimony that accused-appellant raped her, not only once, but several times, although she could no longer remember the dates, except the latest incident which came to the knowledge of her mother. It considered AAA a credible witness as she was able to narrate, in a clear and straightforward manner, how she was raped by accused-appellant. It gave no weight to the testimony of CCC as his statement that accused-appellant was with him in the mountain on April 4, 2012 was refuted by accused-appellant himself who categorically declared that on said date, he slept with his live-in partner, BBB, their children, and AAA.[17] Hence, the RTC disposed of the case as follows:

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[14] Id. at 5-6.

[15] Id.

[16] TSN, May 13, 2016, p. 32.

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

WHEREFORE, this Court finds ROGER PADIN y TILAR GUILTY beyond reasonable doubt of RAPE committed against AAA and is, hereby, sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay AAA the amounts of SEVENTY-FIVE THOUSAND PESOS (Php75,000.00), as civil indemnity, SEVENTY-FIVE THOUSAND PESOS (Php75,000.00), as moral damages and SEVENTY-FIVE THOUSAND PESOS (Php75,000.00), as exemplary damages, which shall be subject to legal interest at the rate of six percent (6%) *per annum* from the date of finality of judgment until fully paid.

SO ORDERED.[18]

Aggrieved, accused-appellant appealed before the CA.

CA Ruling

The CA denied the appeal for lack of merit.

The CA gave full faith and credit to AAA's positive identification of accused-appellant as her attacker which remained consistent on cross-examination. It noted the proximity as accused-appellant was already on top of AAA when she was awakened, coupled with the fact that she knew accused-appellant well, being the live-in partner of her mother, enabled AAA to easily recognize him. Moreover, the CA added that AAA's public outcry of *violacion de una mujer* was fortified by the medical findings of Dr. Lacorte. Citing *People v. Manigo*,[19] the CA stated that it is also hornbook precept that where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[20] The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the **APPEAL** is **DENIED** for lack of merit.

SO ORDERED.[21]

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[18] Id. at 52.

[19] 725 Phil. 324 (2014).

[20] *Rollo*, pp. 9-10.

[21] Id. at 10.

Hence, this appeal, with accused-appellant assailing the said CA Decision. In compliance with the Court's Resolution[22] dated February 12, 2020, requiring the parties to submit their respective supplemental briefs, both accused-appellant[23] and the Office of the Solicitor General (OSG)[24] manifested that in lieu of supplemental briefs, they were adopting their respective briefs filed before the CA.

Issue

The issue for the Court's resolution is whether the CA's Decision is contrary to facts, law, and jurisprudence.

The Court's Ruling

The appeal lacks merit.

Article 266-A of the RPC, as amended by RA 8353,[25] or the Anti-Rape Law of 1997, provides the elements for the crime of rape:

> Art. 266-A. *Rape; When and how committed.* - Rape is committed—
>
> 1) By a man who shall have **carnal knowledge of a woman** under any of the following circumstances:
>
> a) Through **force, threat, or intimidation**;
> b) When the offended party is deprived of reason or otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority; and
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (Emphases supplied)

In this case, all the elements necessary to sustain a conviction for simple rape are present: (1) that accused-appellant had carnal knowledge of AAA; and (2) that said act was accomplished

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[22] Id. at 16.

[23] Id. at 18-19.

[24] Id. at 23-24.

[25] Approved on September 30, 1997.

through the use of force or intimidation.[26] It was sufficiently established by the testimony of AAA that there was carnal knowledge between her and accused-appellant. This was corroborated by the medical findings of Dr. Lacorte which showed vaginal lacerations. Regarding the element of force or intimidation, or exertion of moral ascendancy, the RTC aptly concluded that although the rape was committed without physical force or intimidation, the moral ascendancy of accused-appellant over AAA renders it unnecessary to prove force or intimidation. It is settled that where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation.[27]

Accused-appellant argued that AAA's testimony was tainted with illogical details which were contrary to human experience. Specifically, accused-appellant harped on the presence of AAA's other siblings who were sleeping beside her in the same small room, and that her siblings continued sleeping soundly and failed to notice her cries during the alleged sexual abuse. This is a weak argument that deserves scant consideration. As correctly pointed out by the CA, thus:

> However, as repeatedly underscored in the forensic canvass, lust is no respecter of time and place. Neither the crampness of the room, the presence of other people therein, nor the high risk of being caught, has been held sufficient and effective obstacles to deter the commission of rape. Isolation is not a determinative factor to rule on whether a rape was committed or not and there is no rule that a woman can only be raped in seclusion. It can be committed, discreetly or indiscreetly, even in a room full of family members sleeping side by side.[28] Withal, it was not well-nigh unthinkable for the members of

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[26] See *People v. Lapore*, 761 Phil. 196, 204 (2015), citing *People v. Quintal*, 656 Phil. 513, 522 (2011).

[27] *People v. XXX*, G.R. No. 235662, July 24, 2019, citing *People v. Padua*, 661 Phil. 366, 370 (2011).

[28] Citing *People v. Gerandoy*, 743 Phil. 396 (2014).

the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed.[29]

Likewise, accused-appellant's argument that AAA was only persuaded by ill-motive to file the case as an act of revenge against him because he castigated her on the day of the alleged incident, must be rejected. As correctly opined by the CA, it was indeed highly improbable for a girl of tender years and not yet exposed to the ways of the world, like AAA, to impute a crime as serious as rape if the crime had not really been committed.[30]

In *People v. Rubio*,[31] the Court explained:

> This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. 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.[32]

On accused-appellant's claim that the trial court should have dismissed the case considering that AAA executed an Affidavit of Desistance[33] which exonerated him from the charge, it is worthy to note that AAA's affidavit of desistance is not a ground for the dismissal of the case. As discussed in *People v. Bagsic*:[34]

> Rape is no longer considered a private crime as R.A. No. 8353 or the Anti-Rape Law of 1997 has reclassified rape as a crime against

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[29] *Rollo*, p. 9, citing *People v. Descartin, Jr.*, 810 Phil. 881 (2017).

[30] Id. at 10.

[31] 683 Phil. 714 (2012).

[32] Id. at 722-723, citing *People v. Perez*, 595 Phil. 1232 (2008).

[33] Records, pp. 29-30.

[34] 822 Phil. 784 (2017).

persons. Rape may now be prosecuted *de officio*; a complaint for rape commenced by the offended party is no longer necessary for its prosecution. Hence, an affidavit of desistance, which may be considered as pardon by the complaining witness, is not by itself a ground for the dismissal of a rape action over which the court has already assumed jurisdiction.[35] (Citations omitted)

Moreover, it has been consistently held that courts look with disfavor on affidavits of desistance. In *Bagsic*, the Court had an occasion to discuss the rationale for this:

> We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.
>
> Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed [her] mind for one reason or another. Such a rule [would] make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses.[36]

In this case, AAA's purported affidavit of desistance should be regarded as exceedingly unreliable more so, as aptly observed by the CA, that AAA testified that its execution was borne out of sheer commiseration for her siblings, and such justification can hardly affect the established fact that accused-appellant sexually abused her.

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[35] Id. at 795.

[36] Id. at 795-796.

On accused-appellant's testimony on denial, a defense of denial and alibi cannot stand against the prosecution's evidence. As expounded by the Court in *People v. Carillo*:[37]

> *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.[38]

Accused-appellant failed in this regard. Besides, as correctly noted by the OSG, accused-appellant's denial and alibi belied his own testimony and that of his lone witness, CCC.

Indeed, the RTC did not err in giving full faith to AAA's credibility. In *Carillo*, the Court held that:

> As a general rule, on the question [of] whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[39]

Here, the Court finds no cogent reason to disturb the findings of the RTC, as correctly sustained by the CA, for accused-appellant's conviction of rape.

The Court notes, however, that the CA failed to pass upon and discuss the penalty imposed by the RTC. Thus, the Court deems it apt to re-examine the same.

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[37] 813 Phil. 705 (2017).

[38] Id. at 715-716.

[39] Id. at 714, citing *People v. Burce*, 730 Phil. 576 (2014).

Article 266-B provides for the penalties for rape, thus:

> Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the **victim is under eighteen (18) years of age** and the **offender is a** parent, ascendant, **step-parent**, guardian, relative by consanguinity or affinity within the third civil degree, or the **common-law spouse of the parent of the victim[.]** (Emphases supplied)

The Court explained in *People v. Arcillas*:[40]

> Rape is qualified and punished with death when committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. However, an accused cannot be found guilty of qualified rape unless the information alleges the circumstances of the victim's over 12 years but under 18 years of age and her relationship with him. The reason is that such circumstances alter the nature of the crime of rape and increase the penalty; hence, they are special qualifying circumstances. As such, both the age of the victim and her relationship with the offender must be specifically alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed.[41] (Citations omitted)

In other words, to justify the imposition of the death penalty under the aforequoted provision, the twin circumstances of minority and relationship must be alleged in the *Information* and proved during the trial.[42]

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[40] 692 Phil. 40 (2012).

[41] Id. at 52.

[42] See *People v. XXX*, G.R. No. 235662, July 24, 2019; *People v. Malibiran*, 600 Phil. 700 (2009), citing *People v. Barcena*, 517 Phil. 731 (2006).

In this case, AAA's minority was alleged in the *Information* and proven by the prosecution's documentary evidence that she was born on September 20, 1999. She was under the age of 18 when she was sexually abused by accused-appellant in 2012. Her relationship with the accused-appellant, however, as properly observed by the RTC, was not specified in the *Information*.

The Court ruled in *People v. Lapore*:[43]

> Sections 8 and 9 of Rule 110 of the Rules on Criminal Procedure provide that for qualifying and aggravating circumstances to be appreciated, it must be alleged in the complaint or information. This is in line with the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the Information.[44]

Hence, although the prosecution has duly established that accused-appellant is the common-law spouse of BBB, AAA's mother, which, however, was not alleged in the *Information*, such circumstance could not be appreciated to qualify a crime from simple rape to qualified rape as defined under Article 266-B of the RPC, as amended. Thus, although AAA's minority went uncontroverted, the element of relationship was not competently established.

As a consequence, accused-appellant committed only simple rape, thus precluding the application of RA 9346.[45] Pursuant to Article 266-A of the RPC, the proper penalty is *reclusion perpetua*. Although the RTC correctly sentenced accused-appellant to suffer the penalty of *reclusion perpetua,* it, however, confusingly appended the phrase "without eligibility for parole"

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[43] 761 Phil. 196 (2015).

[44] Id. at 203.

[45] An Act Prohibiting the Imposition of Death Penalty in the Philippines, approved on June 24, 2006; see *People v. Gallano*, 755 Phil. 120, 130-131; 135 (2015).

to *reclusion perpetua*. It should be stressed that the qualification of "without eligibility for parole" is material to qualify *reclusion perpetua* in order to emphasize that the appellant should have been sentenced to suffer the death penalty had it not been for RA 9346. Here, to reiterate, the death penalty is not warranted, the crime committed being only simple rape. Hence, there is no need to use and affix the phrase "without eligibility for parole" to qualify the penalty of *reclusion perpetua*; it is understood that convicted person penalized with an indivisible penalty is not eligible for parole.[46] Accordingly, the phrase "without eligibility for parole" should be deleted to prevent confusion.

Finally, as to the RTC's award of damages, the Court finds the same appropriate under the circumstances. Civil indemnity is mandatory upon the finding of the fact of rape, while moral damages are proper without need of proof other than the fact of rape by virtue of the undeniable moral suffering of the victim due to the rape. Under Article 2230 of the Civil Code, exemplary damages may be imposed in criminal cases as part of the civil liability when the crime was committed with one or more aggravating circumstances. Article 2229 of the same Code permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[47] As to the amount, *People v. Jugueta*[48] provides that when the crime committed is simple rape which calls for the imposition of *reclusion perpetua* only, as in this case, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present. The RTC was, therefore, correct in ordering accused-appellant to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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[46] A.M. No. 15-08-02-SC, Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties; August 4, 2014.

[47] *People v. Arcillas*, supra note 40, at 53.

[48] 783 Phil. 806 (2016).

Similarly, the RTC properly imposed interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of the decision to complete the quest for justice and vindication on the part of AAA. This is pursuant to Article 2211 of the Civil Code, which states that in crimes and *quasi-delicts*, interest as a part of the damages may, in a proper case, be adjudicated in the discretion of the court.[49]

WHEREFORE, the appeal is **DISMISSED**. The Court finds Roger Padin *y* Tilar **GUILTY** beyond reasonable doubt of the crime of Rape as defined and penalized under Article 266-A, par. 1, in relation to Art. 266-B, par. (1) of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay the victim AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with all such amounts to earn interest of six percent (6%) *per annum* from date of finality of this Decision until fully paid.

SO ORDERED.

Leonen (*Chairperson*), *Hernando, Inting,* and *Rosario, JJ.*, concur.

[49] *People v. Arcillas*, supra note 40, at 54.

EN BANC

[AM. No. P-21-4102. 5 January 2021]
[Formerly A.M. No. 18-04-42-MTC]

RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE MUNICIPAL TRIAL COURT, LABO, CAMARINES NORTE

D E C I S I O N

PER CURIAM:

This administrative case stemmed from the March 21, 2018 Memorandum[1] of Eduardo G. Tesea, Team Leader of the Office of the Court Administrator (OCA) Financial Audit Team (Audit Team) of the Fiscal Monitoring Division (FMD), Court Management Office (CMO) to Court Administrator Jose Midas P. Marquez charging Eden P. Rosare (Rosare), Clerk of Court II, Municipal Trial Court (MTC), Labo, Camarines Norte of: (a) violation of OCA Circular No. 13-92 dated March 1, 1992[2] as amended by Supreme Court (SC) Administrative Circular (A.C.) No. 3-00 dated June 15, 2000[3] and OCA Circular No. 50-95 dated October 11, 1995[4]; (b) Gross Dishonesty; and (c) Malversation of Public Funds or Property.[5]

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[1] *Rollo,* pp. 3-32.

[2] Court Fiduciary Funds, March 1, 1992.

[3] Re: Guidelines in the Allocation of the Legal Fees Collected Under Rule 141 of the Rules of Court, as Amended Between the General Fund and the Judiciary Development Fund.

[4] Court Judiciary Fund

x x x

(4) All collections from bail bonds, rental deposits and other fiduciary collections shall be deposited within twenty four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines, xxxx

[5] Article 217 of the Revised Penal Code (RPC).

The Team conducted two audits on the accountabilities of Rosare as Clerk of Court II of MTC, Labo, Camarines Norte (MTC Labo) from November 2014 to February 28, 2017 in compliance with Travel Order No. 126-2014 dated November 4, 2014[6] and Travel Order No. 23-2017 dated February 24, 2017.[7]

In November 2014, the Audit Team conducted an audit[8] of the cash and accounts of Rosare due to her failure to submit the monthly financial reports despite due notice as required by OCA Circular No. 32-93[9] dated July 9, 1993. The audit disclosed that Rosare's cash on hand in the amount of ₱154,080.00 did not correspond with the unremitted or undeposited collections on all funds in the amount of ₱222,484.00.

The audit also revealed that Rosare delayed the deposit of her judiciary fund collections in the total amount of ₱222,484.00 which resulted in a shortage of ₱68,404.00. However, after arduous effort to find the shortage of ₱68,404.00, Rosare found a portion of it in the drawer next to her table which eventually reduced the shortage on the Fiduciary Fund (FF) and the Sheriffs Trust Fund (STF) to ₱1,000.00 each and on the Special Allowance for the Judiciary Fund (SAJF) to ₱3,168.10.

Rosare likewise failed to deposit her collections within the day or the next banking day contrary to the provisions of the Commission on Audit and Department of Finance (COA-DOF) Joint Circular 1-81 dated January 1, 1981,[10] OCA Circular No. 13-92 dated March 1, 1992[11] and SC A.C. No. 3-00 dated

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[6] *Rollo*, p. 35.

[7] Id. at 38.

[8] Id. at 39-48.

[9] Collection of Legal Fees and Submission of Monthly Report of Collections.

[10] Amendments to Paragraph II, Sec. 2 of Department Order No. 20-73, (Ministry of Finance) dated June 14, 1973 on the Frequency of Deposits of National Collections Direct to the Bureau of the Treasury or through any of the authorized Government Depository Banks.

[11] Court Fiduciary Funds, March 1, 1992.

June 15, 2000.[12] The collections for the FF were also not deposited on time in violation of OCA Circular No. 50-95 dated October 11, 1995.[13]

Furthermore, Rosare overlooked her task of filing and submitting monthly reports of collections and deposits or withdrawals to the Accounting Division (AD), Financial Management Office (FMO), OCA, as required in OCA Circular 113-04 dated September 16, 2004[14] which provides that monthly reports be sent not later than the 10th day of each succeeding month to the Chief Accountant of the AD, FMO, OCA. She likewise failed to refund several cash bonds in the total amount of ₱86,000.00 to the bondsmen or to their authorized representatives even when the amount was already withdrawn from the depository bank. Also, Rosare allocated the fees on the solemnization of marriage between the Judiciary Development Fund (JDF) and the SAJF which was already disallowed by Administrative Order (A.O.) No. 125-2007 dated August 9, 2007.[15] She also failed to follow OCA Circular No. 22-94 dated April 8, 1994[16] as to the proper handling and use of official receipts.

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[12] xxx

"collections must be deposited everyday or if depositing daily is not possible deposit for the fund shall be at the end of every month, provided however, that every time collections for the fund reach P500.00, the same shall be deposited immediately before the period above indicated.

xxx

[13] Subject: Court Judiciary Fund

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(4) All collections from bail bonds, rental deposits and other fiduciary collections shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof, with the Land Bank of the Philippines, xxxx

[14] Submission of Monthly Reports of Collections and Deposit, September 16, 2004.

[15] Guidelines on the Solemnization of Marriage by the Members of the Judiciary.

[16] Guidelines in the Proper Handling and Use of Official Receipts.

Compounding her failures, Rosare also did not properly update the official cash books by regularly entering therein the daily collections as per SC A.C. No. 3-00 dated June 15, 2000 and to certify the entries therein as correct. She likewise did not use the prescribed cash book on General Fund (GF) account of the Court, which is comprised of forfeited or confiscated bonds and income derived from the interest earned on FF or STF's account. She failed to attach the prescribed Legal Fees Form in all case records as required under OCA Circular No. 26-97 dated May 5, 1997.[17] Finally, the STF collections were erroneously deposited by Rosare in the FF bank account of the court.

In a Letter dated November 19, 2014,[18] Rosare was required to explain in writing how and why she incurred the shortages of ₱1,000 on FF, ₱1,000 on the STF and ₱3,168.10 on the SAJF. She was likewise required to deposit the total amount of ₱222,484.00 corresponding to the unremitted or undeposited collections on various funds; to submit a written explanation why she failed to deposit the same immediately with the authorized government depositories; and to explain why she incurred a shortage of ₱68,404.00.

Name of Fund	Amount (₱)
Fiduciary Fund (FF)	202,000.00
Sheriffs Trust Fund (STF)	16,000.00
Judiciary Development Fund (JDF)	2,203.20
Special Allowance for the Judiciary Fund (SAJF)	1,780.80
Mediation Fund (MF)	500.00
TOTAL	222,484.00

She was likewise required to: (a) deposit or remit all judiciary collections on time as per the COA-DOF Joint Circular 1-81 and OCA Circular No. 13-92 dated March 1, 1992 as amended by SC A.C. No. 3-2000 dated June 15, 2000 or otherwise deposit within a reasonable period of time; (b) follow the directive of

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[17] Legal Fees Form for Lower Courts, May 5, 1997.

[18] *Rollo*, pp. 39-48.

OCA Circular No. 113-04 dated September 16, 2004; (c) properly file the Monthly Reports of Collections or Deposits and Withdrawals on FF and STF accounts with its corresponding attachments; (d) open a bank account for STF using the unwithdrawn STF of ₱80,000.00 deposited with the FF account as an initial deposit and report the same separately under STF account with the presiding judge as co-signatory; (e) refrain from holding the withdrawn cash bond for a long period of time and implement an effective method of returning the said cash bond to the bondsmen or his or her authorized representatives; (f) reconcile the book balance with cash on hand daily and follow the provision of Chapter 2 (10) of the Cash Examination Manual; (g) use the prescribed cash book for General Fund; (h) follow the guidelines in OCA Circular No. 22-94 dated April 8, 1994; (i) deposit all fees collected for the solemnization of marriage to the JDF; (j) use the prescribed cash book on all funds maintained by the court, i.e., one cash book per fund; (k) ensure a comprehensible entry in the triplicate copies of official receipts; (1) attach Legal Fees Form on all case records as per OCA Circular No. 26-97 dated May 5, 1997; and (m) coordinate with FMO, OCA regarding the requirements on fidelity bond in compliance with Section 101 of Presidential Decree (P.D.) No. 1445.[19]

Moreover, Rosare was reminded to issue receipts for every STF transaction on a per case basis and reported separately. Immediately after effecting a service of court processes, the sheriff or process server or other authorized court personnel shall prepare a Statement of Liquidation which shall be approved by the Executive Judge or Presiding Judge to be submitted to the Clerk of Court.

Presiding Judge Salvador C. Villarosa, Jr. of MTC Labo was requested to assign a court personnel who can assist Rosare in handling financial transactions, particularly in the recording in the cashbook and the preparation of the Monthly Report of

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[19] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

Collections and Deposits or Withdrawals, and in issuing receipts and assessment of filing fees.

On February 16, 2017, pursuant to the January 23, 2017 Memorandum approved on February 13, 2017 by the Chief Justice, Rosare was relieved from her position as Clerk of Court and her authority to receive, collect and withdraw any court fund was suspended effective immediately.[20]

In February 2017,[21] the Audit Team conducted another audit of Rosare's books of accounts for the same reason, that is, failure to submit the monthly financial reports despite due notice. An inventory of the cash on hand in the amount of ₱23,625.00 and its corresponding official receipts revealed that MTC Labo has not been depositing its daily collections as per circulars issued by the Court. After the audit, the Audit Team found that Rosare had a shortage of ₱456,470.381, to wit[22]:

Name of Fund	Shortage (₱)
Fiduciary Fund (FF)	381,894.18
Sheriff's Trust Fund (STF)	41,000.00
Judiciary Development Fund (JDF)	3,842.20
Special Allowance for the Judiciary Fund (SAJF)	4,228.00
Mediation Fund (MF)	25,500.00
General Fund (GF)	6.00
TOTAL	456,470.38

Rosare failed to regularly submit the Monthly Reports of Collections and Deposit or Withdrawals on all funds to the AD, FMO, OCA as per OCA Circular 113-04 dated September 16, 2004. She also did not remit or deposit on a regular basis to the Land Bank of the Philippines (LBP), Labo Branch in accordance with COA-DOF Joint Circular 1-81 and in OCA Circular No. 13-92 dated March 1, 1992 as amended by SC A.C. No. 3-2000 dated June 15, 2000.

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[20] *Rollo,* p. 81.

[21] Id. at 79-86.

[22] Id. at 1-2.

Moreover, Rosare intentionally detached or severed pages 73 and 74 from the FF cashbook for no apparent reason. She also deliberately understated her collections on JDF and SAJF in several instances in January 2017. As to the STF, the applicable rules regarding the liquidation of cash advances made by the process server were not fully complied with.

Also, MTC Labo has no official cashbook on the GF account contrary to the rule that each fund account must exclusively use one official cashbook. In addition, certifications as to the correction of entries in the cashbooks on all fund accounts were not regularly observed by Rosare or any accountable officer. Several entries on the triplicate copies of the issued official receipts in FF and STF were not legible. Finally, the recommendations made in the first audit conducted on November 1 to 12, 2014 were not fully complied with by Rosare.

In a Letter dated March 23, 2017,[23] the Audit Team recommended that Rosare be directed to: (a) submit all necessary documents to support all unauthorized and unaccounted FF and STF withdrawals in the bank or otherwise restitute the shortages in the amount of ₱469,464.38 within ten (10) days from notice; (b) explain in writing within ten (10) days from notice why: (i) she incurred such shortages and failed to comply with the Court circulars and issuances regarding proper handling of court collections; (ii) she purposely detached or severed pages 73 and 74 from the FF cashbook; and (iii) she understated her collections for JDF and SAJF in various instances in January 2017; and (c) submit all required financial reports by the AD, FMO, OCA.

The Audit Team likewise recommended that Hans P. Camu, the Court Interpreter and Officer-in-Charge, be advised to: (a) deposit or remit all judiciary collections on time; (b) certify the correctness of entries in the cashbooks on all funds; (c) remit all GF collection in the Bureau of Treasury Savings Account No. 3402-2745-13; (d) follow the procedures on proper handling and disbursement of STF account; (e) use the prescribed cash book on GF account; (f) ensure a legible entry in the triplicate

[23] Id. at 79-86.

copies of official receipts; (g) reconcile the book balance with cash on hand on a daily basis and follow the provision of Chapter 2 (10) of the Cash Examination Manual; (h) remit all GF collections in Bureau of Treasury Savings Account No. 3402-2745-13; and (i) coordinate with the FMO, OCA regarding the requirements on Fidelity Bond in compliance with Section 101 of P.D. No. 1445.

In her Explanation dated April 28, 2017,[24] Rosare reasoned that she never received the letters of Atty. Gilda A. Sumpo, the Chief Judicial Officer of AD, requiring her to submit monthly or quarterly financial reports on different fund accounts of the court. She claimed that the said letters were received by Lovely Camonas, the Court Stenographer of MTC Labo, who did not turn over said letters to her. She showed the alleged registry receipts to the Audit Team as proof that she mailed the alleged unsubmitted reports required by the FMO.

She explained that the shortages on FF or STF were based on the following: (a) the unauthorized or unaccounted FF/STF bank withdrawals in the amount of ₱213,000.00 referred as bail bonds were withdrawn and received by the bondsmen; (b) the over-withdrawal of interest charged in the amount of ₱894.18 is not allowed by the LBP; (c) the amount of ₱16,000.00 was no longer deposited because Aida Francisco, the bondsman, withdrew the cash bond on November 26, 2014; (d) the unauthorized STF withdrawals in the total amount of ₱13,000.00 were not yet accounted for because of missing files; (e) there was no double withdrawal of ₱3,000.00 on STF because of erroneous input of case numbers; and (f) the portion of the undeposited amount of ₱144,595.00 was not yet turned over to her for deposit while the rest of the undeposited amount had not yet been accounted for because of missing files.

Furthermore, she clarified that the shortages in the STF were due to the following: (a) the undeposited STF collection in the amount of ₱28,000.00 refers to the cash advance of the process server which was not yet liquidated as there was yet no court

[24] Id. at 92-96.

order from the presiding judge; (b) the shortage in the amount of ₱12,000.00 was erroneously deposited in the FF account; and (c) the unsupported bank withdrawal of ₱1,000.00 was withdrawn on March 26, 2015 for a certain case.

Rosare further explained that the shortages on the JDF and the SAFJ in the amounts of ₱3,842.20 and ₱4,228.00, respectively, were due to her failure to reconcile the amounts indicated in the official receipts and in the cashbook due to heavy workload. Lastly, Rosare reasoned that the shortage on the MF was due to missing files.

She elucidated that she purposely detached or severed pages 73 and 74 from the FF cashbook because of her writings on it, that is, *"GUSTO KO NG MAGPAKAMATAY PAGOD AT HIRAP NA HIRAP NA AKO. SHIT! SHIT! MGA PERWISYO! SORRY IYA!"*. She insisted that she did not defy Court circulars and other Court issuances regarding the proper handling of court collections. She maintained that she submitted all the required reports to the AD on time as per the registry receipts she mentioned. She prayed that she be given enough time to locate the missing files. However, she is willing to pay and restitute the unaccounted amounts in case she fails to find them.

On March 21, 2018, the Audit Team submitted its Report[25] which found Rosare guilty of violation of A.C. No. 32-93 as amended by A.C. No. 3-2000 and A.C. No. 50-95, Gross Dishonesty and Malversation of Public Funds or Property, for which grounds it recommends that she be dismissed from service with forfeiture of all benefits except her accrued leave credits, and with prejudice to re-employment in the government service.

Recommendation of the OCA:

In its March 26, 2018 Memorandum[26], the OCA approved the findings and recommendations of the Audit Team, to wit:

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[25] Id. at 3-32.

[26] Id. at 1-2.

1. The report be DOCKETED as a regular administrative complaint against Ms. Eden P. Rosare, Clerk of Court II, MTC, Labo, Camarines Norte and that she be found GUILTY of violation of Administrative Circular No. 32-93 (Re: Collection of Legal Fees and Submission of Monthly Report of Collections) as amended by Administrative Circular No. 3-2000 and Administrative Circular No. 50-95, gross dishonesty and malversation of public funds or property (Article 217, Revised Penal Code) and be DISMISSED from the service effective immediately, with forfeiture of all retirement benefits except her accrued leave credits, and with prejudice to re-employment in any branch or service of the government, including government-owned or controlled corporations;
2. The position of Ms. Eden P. Rosare as Clerk of Court II, MTC, Labo, Camarines Norte be DECLARED VACANT;
3. The Financial Management Office, Office of the Court Administrator (OCA) be DIERCTED to:

   3.1) PROCESS the monetary value of the terminal leave benefits of Ms. Eden P. Rosare and her withheld salaries, bonuses and other benefits, if any, dispensing with the usual documentary requirements, and to apply the same to the shortages in the following order:

Name of Fund	Period Covered	Amount
Fiduciary Fund	1 November 2014 to 28 February 2017	PHP 318,894.18
Sheriffs Trust Fund	1 November 2014 to 28 February 2017	41,000.00
Judiciary Development Fund	1 November 2014 to 28 February 2017	3,842.00
Special Allowance for the Judiciary Fund	1 November 2014 to 28 February 2017	4,228.00
Mediation Fund	1 November 2014 to 28 February 2017	25,500.00
General Fund	1 November 2014 to 28 February 2017	6.00
Total		PHP 456,470.38

3.2) COORDINATE with the Fiscal Monitoring Division (FMD), Court Management Office (CMO), OCA, before the processing of the checks to be issued in favor of the Fiduciary Fund and Sheriffs Trust Fund accounts of the MTC, Labo, Camarines Norte for the preparation of the necessary communication with the incumbent Clerk of Court/Officer-in-Charge thereat;

4. ORDER Ms. Rosare to restitute the remaining shortages (to be determined by the FMD, CMO, OCA), given that the monetary value of her earned leave credits and withheld salaries, bonuses and other benefits are insufficient to compensate the aforementioned shortages; and

5. Hon. Salvador C. Villarosa, Jr., Presiding Judge, MTC, Labo, Camarines Norte be DIRECTED to:

   a) CLOSELY MONITOR the financial transactions of the court and ENSURE that the Clerk of Court/Officer-in-Charge religiously complies with the directives/circulars issued by the Court, particularly on the proper handling of judiciary fund; and

   b) STUDY and IMPLEMENT procedures that shall strengthen the internal control over financial transactions of the court to avoid any irregularity in the collections, deposits and withdrawals/disbursement of court funds, otherwise, he shall be held equally liable for the infractions committed by the employees under his supervision.

6. The Legal Office, OCA, be DIRECTED to file the appropriate criminal charges against Ms. Eden P. Rosare.

Sole Issue

Whether or not Rosare should be held administratively liable for the acts complained of.

Our Ruling

We resolve to adopt the detailed findings of the OCA and to mete on respondent the recommended penalty of dismissal from the service with its concomitant accessory penalties.

Without a doubt, Rosare failed to perform with utmost diligence her responsibilities and was remiss in her duties of

depositing the court collections on time, updating the entries in the official cashbooks, and regularly submitting her monthly reports. The proffered justification for her infractions fails to persuade this Court to exercise leniency and benevolence in resolving the instant administrative matter.

OCA Circular No. 32-93 requires all Clerks of Court/Accountable Officers to submit to the Court a monthly report of collections for all funds not later than the 10th day of each succeeding month. Likewise, OCA Circular No. 113-04 provides that the monthly reports of collections and deposits for the JDF, SAJ and FF shall be sent not later than the 10th day of each succeeding month to the Chief Accountant of AD, FMO, OCA.

As to the period within which to deposit the fiduciary collections, COA-DOF Joint Circular No. 1-81 provides that collecting officers shall deposit their national collections intact to the Bureau of the Treasury or to any authorized government depository bank as prescribed below:

Distance (Office to BTR/ Dep. Bank)	Travel Time (To and From Office to BTR/Dep. Bank – Ordinary Transp.	Accumulated Collections	Frequency Deposits
Less than 15 Km.	Less than 1 day	a.1 500 or more a.2 Less than P500	a. Daily b. Weekly or as soon as collections reach P500.00
15-30 Km.	a. Less than 1 day	a.1 P2,000 or more a.2 Less than P2,000	a.1. Daily a.2 Weekly or as soon as collections reach P2,000.00

	b. A day or more	b.1 P2,000 or more	b.1. Weekly
		b.2 Less than P2,000	b.2 Twice a month or as soon as collections reach P2,000.00
More than 30 kms.	a. Less than 1 day	a.1 P2,000 or more	a.1. Daily
		a.2 Less than P2,000	a.2 Weekly or as soon as collections reach P2,000.00
	b. A day or more	b.1 More than P5,000	b.1. Twice a week
		b.2 P2,000 – P5,000	b.2 Weekly
		b.3 Less than P2,000	b.3 Monthly or as soon as collections reach P2,000.00

Also, OCA Circular No. 50-95 requires that all collections from bailbonds, rental deposits, and other fiduciary collections be deposited within 24 hours by the Clerk of Court concerned, upon the receipt thereof, with the LBP. In localities where there are no branches of LBP, fiduciary collections shall be deposited by the Clerk of Court with the provincial, city or municipal treasurer.

Moreover, SC A.C. No. 3-00[27] mandates that the daily collections for the JDF and the GF in the MTC shall be deposited

[27] Re: Guidelines in the Allocation of the Legal Fees Collected Under Rule 141 of the Rules of Court, as Amended Between the General Fund and the Judiciary Development Fund.

everyday with the nearest LBP branch or if depositing daily is not possible, deposits for the fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the said period.

Undoubtedly, Rosare violated OCA Circular No. 32-93[28] when she failed to regularly submit monthly reports of collections and deposits and official receipts and other documents, despite this Court's repeated orders. As a Clerk of Court, Rosare is responsible for court records and physical facilities of the court and is accountable for the court's money and property deposits as per Section B, Chapter 1 of the 1991 Manual for Clerks of Court and the 2002 Revised Manual for Clerks of Court (A.M. No. 02-5-07-SC).[29] As a custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction or impairment of said funds and property.[30] Thus, Rosare should be steadfast on her duty to submit monthly reports on the court's finances pursuant to OCA Circular No. 32-93 and OCA Circular 113-04 and to immediately deposit the various funds received by her to the authorized government depositories in accordance with COA-DOF Joint Circular No. 1-81, SC A.C. No. 3-00 and OCA Circular No. 50-95.

Evidently, given the findings of the OCA Audit Team coupled with Rosare's admissions, the latter not only failed to perform the duties of her office but also fell short in adhering to the high ethical standards expected of court employees. We reiterate the pronouncements made in *Efondo v. Favorito*[31] that as a Clerk of Court, Rosare, is accountable to the people and expected to act with utmost responsibility, integrity, loyalty, and efficiency, to wit:

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[28] Collection of Legal Fees and Submission of Monthly Report of Collections.

[29] *Office of the Court Administrator v. Canque,* 606 Phil. 209, 219 (2009).

[30] *Office of the Court Administrator v. Banag,* 651 Phil. 308, 324 (2010).

[31] 816 Phil. 962(2017).

In almost all administrative cases, this Court has reminded everyone in the public service that public office is a public trust. No less than the fundamental law of the land requires that "[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." [N]o less can be expected from those involved in the administration of justice. Public servants are even mandated to uphold public interest over personal needs. Everyone, from the highest official to the lowest rank employee, must live up to the strictest norms of probity and integrity in the public service.

Specifically in this case, the Clerk of Court is an important officer in our judicial system. The said office is the nucleus of all court activities, adjudicative and administrative. The administrative functions are as vital to the prompt and proper administration of justice as his judicial duties are. The Clerk of Court performs a very delicate function. He or she is the custodian of the court's funds and revenues, records, property and premises. Being the custodian thereof, the Clerk of Court is liable for any loss, shortage, destruction or impairment of said funds and property. Needless to say, thus, Clerks of Court should be steadfast in their duty to submit monthly reports on the court's finances pursuant to OCA Circular Nos. 50-95 and 113-2004 and to immediately deposit the various funds received by them to the authorized government depositories.

Furthermore, Rosare incurred shortages in the amount of ₱456,470.38 and delay in the remittance of her cash collections in violation of COA-DOF Joint Circular No. 1-81, OCA Circular No. 50-95 and SC A.C. No. 3-2000. Her failure to promptly remit her fiduciary collections was in flagrant violation of the said circulars. Such acts constitute gross dishonesty and gross neglect of duty which is punishable with dismissal pursuant to the Revised Rules of Administrative Cases in the Civil Service.[32]

Dishonesty is defined as intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. Dishonesty, like bad faith, is not

[32] Civil Service Commission Resolution No. 1101502, November 8, 2011.

simply bad judgment or negligence, but a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[33]

Rosare's act of misappropriating court funds, as evidenced by the shortages in her accounts, by delaying or not remitting or delaying the deposit of the court collections within the prescribed period constitutes dishonesty which is definitely an act unbecoming of a court personnel.[34] Failure of Rosare to remit funds upon demand by an authorized without any justifiable reason constitutes *prima facie* evidence that she has put such missing funds or property to personal use.[35]

As a Clerk of Court, a vital post in the hierarchy of positions in the trial court, Rosare was expected to live up to the strictest standards of honesty and integrity[36]. That she failed to adhere to the high ethical standards to preserve the court's good name and standing is undisputed.[37] For failure of Rosare to: (a) regularly submit monthly reports of collections and deposits and official receipts and other documents despite due notice; (b) remit her fiduciary collections within the prescribed period; and (c) for incurring shortages in the total amount of ₱456,470.38, which acts constitute gross dishonesty and gross

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[33] *Civil Service Commission v. Perocho, Jr.,* 555 Phil. 156, 164 (2007); citing *Wooden v. Civil Service Commission,* G.R. No. 152884, September 30, 2005, 471 SCRA 512, 526.

[34] *Villar v. Angeles,* 543 Phil. 135, 145-146 (2006).

[35] *Office of the Court Administrator v. Besa,* 437 Phil. 372, 380 (2002).

[36] *Report on the Financial Audit Conducted at the Municipal Trial Court of Bani, Alaminos, and Lingayen, in Pangasinan,* 462 Phil. 535, 544 (2003); *Judiciary Planning Development and Implementation Office v. Calaguas,* 326 Phil. 704 (1996).

[37] *Gutierrez v. Quitalig,* 448 Phil. 469, 478 (2003).

neglect of duty, Rosare should be meted with a penalty of dismissal. In addition, Rosare is subject to the following administrative disabilities, namely: (a) cancellation of any civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and government-controlled corporation or government financial institution.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent Eden P. Rosare, Clerk of Court II, Municipal Trial Court, Labo, Camarines Norte **GUILTY** of **DISHONESTY** and **GROSS NEGLECT OF DUTY,** and **ACCORDINGLY, DISMISSES** her from the service with forfeiture of all retirement benefits (excluding earned leave credits), with prejudice to her re-employment in the Government, including government-owned or government-controlled corporations.

Respondent Eden P. Rosare is further ordered to **RESTITUTE** the total amount of ₱456,470.3 8 broken down as follows:

a) Fiduciary Fund	-	₱ 318,894.18
b) Sheriff's Trust Fund	-	₱ 41,000.00
c) Judiciary Development Fund	-	₱ 3,842.00
d) Special Allowance for the Judiciary Fund	-	₱ 4,228.00
e) Mediation Fund	-	₱ 25,500.00
f) General Fund	-	₱ 6.00

The Court **DIRECTS** the Employees Leave Division, Office of Administrative Services, Office of the Court Administrator, to determine the balance of her earned leave credits; and to report thereon to the Finance Division, Fiscal Management Office, Office of the Court Administrator for purposes of computing the monetary value of her earned leave credits and applying the same to her above mentioned shortages and other accountabilities. The remaining amount, if any, shall be released to Rosare subject to the usual clearances and other documentary requirements.

Finally, the Court **DIRECTS** the Office of the Court Administrator to file with dispatch the appropriate criminal charges against Eden P. Rosare.

SO ORDERED.

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

EN BANC

[G.R. No. 218383. 5 January 2021]

THE OFFICERS AND EMPLOYEES OF ILOILO PROVINCIAL GOVERNMENT HEREIN REPRESENTED BY ATTY. EDGAR CLAUDIO O. SUMIDO, *Petitioners, v.* **THE COMMISSION ON AUDIT, CHAIRPERSON MA. GRACIA M. PULIDO-TAN, COMMISSIONER HEIDI L. MENDOZA and COMMISSIONER JOSE A. FABIA,** *Respondents.*

APPEARANCES OF COUNSEL

Edgar Claudio O. Sumido for petitioners.
The Solicitor General for respondents.

D E C I S I O N

ZALAMEDA, *J.*:

Officials and employees should endeavor to keep abreast of laws, rules and regulations, as well as all disallowed transactions received by their office, to avoid illegal, irregular, unnecessary, excessive, extravagant or unconscionable transactions. The grant and approval of a benefit more than five (5) times the amount given by other government offices without ensuring compliance with budgetary rules is a clear showing of gross negligence characterized by having a want of the slightest care and a conscious indifference to the consequences of his or her acts.

The Case

This is a petition for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court assailing Decision[1] No. 2014-

[1] *Rollo*, pp. 208-212; penned by Commission on Audit Chairperson Ma. Gracia M. Pulido-Tan and concurred in by Commissioners Heidi L. Mendoza and Jose A. Fabia.

188 dated 28 August 2014 and the Resolution[2] dated 09 March 2015 of the Commission on Audit (COA) Proper, which upheld the COA Regional Office decision affirming the payment of Productivity Enhancement Incentive (PEI) to the employees of the Province of Iloilo for calendar year (CY) 2009 in the total amount of Php102,700,000.00.

Antecedents

In December 2009, the *Sangguniang Panlalawigan* of Iloilo enacted Appropriation Ordinance No. 2009-06[3] allowing the request for additional funds[4] to cover the grant of PEI amounting to Php50,000.00 per employee, or a total disbursement of Php102.7 million.[5]

On post-audit, the Audit Team Leader and the Supervising Auditor of the Province of Iloilo disallowed the payment of the PEI through ND Nos. 2010-06-101 (09) to 2010-85-101 (09), for the total amount disbursed, on the ground that the payment is irregular and illegal for violating the following provisions: (1) Section 325 (a) of Republic Act No. (RA) 7160 on the provision of Personal Services limitation; and (2) Department of Budget and Management (DBM) Local Budget Circular No. 2009-03 dated 17 December 2009.[6]

Based on post-audit computations, the Province of Iloilo had already exceeded its Personal Services limitation by Php38,701,198.90 even prior to the grant of the PEI benefit to its employees. Hence, the province should not have given this additional benefit to its employees for CY 2009. The following[7] were held liable under the NDs:

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[2] *Id.* at 213.

[3] *Id.* at 166-167.

[4] Amounting to Php69,000,000.00.

[5] *Rollo*, pp. 190, 208.

[6] *Id.*

[7] *Id.* at 169-171.

Name and Position	Participation in the Transaction
Niel D. Tupas, Sr. – Provincial Governor	For approving payment;
Rolex T. Suplico – Provincial Vice Governor / Sangguniang Panlalawigan (SP) – Presiding Officer	For passing the appropriation despite excess in Personal Services limitation;
Oscar S. Garin, Jr. – Floor Leader	For passing the appropriation despite excess in Personal Services limitation;
Macario N. Napulan – SP Member	For passing the appropriation despite excess in Personal Services limitation;
June S. Mondejar – SP Member	For passing the appropriation despite excess in Personal Services limitation;
Rodolfo V. Cabado – SP Member	For passing the appropriation despite excess in Personal Services limitation;
Arthur R. Defensor, Jr. – SP Member	For passing the appropriation despite excess in Personal Services limitation;
Mariano M. Malones, Sr. – SP Member	For passing the appropriation despite excess in Personal Services limitation;
George P. Demaisip – SP Member	For passing the appropriation despite excess in Personal Services limitation;
Cecilia A. Colada – SP Member (FSBM President)	For passing the appropriation despite excess in Personal Services limitation;
Guisseppe Karl D. Gumban – SP Member (PPSK President)	For passing the appropriation despite excess in Personal Services limitation;
Lyd P. Tupas – Provincial Accountant	For certifying as to completeness of documents;
Corazon Estelita S. Beloria – Asst. Prov. Treasurer	For certifying as to availability of funds;
Elena D. Lim – Budget Officer	For certifying as to availability of appropriation;

Salvador P. Cabaluna III – Provincial Legal Officer	For certifying that the officials and employees are entitled to Productivity Enhancement Incentive (PEI);
All other payees as stated in ND Nos. 2010-06-101 (09) to 2010-85-101 (09), all dated 28 September 2010[8]	For being recipients of the disallowed benefits.

Petitioners appealed the disallowance before the COA Regional Office and argued that the Provincial Government of Iloilo acted in good faith in implementing Appropriation Ordinance No. 2009-06 passed by the *Sangguniang Panlalawigan* of Iloilo. The recipients, who received the benefit in good faith, should not be compelled to refund the same. Moreover, even if the province exceeded its Personal Services limitation, the disallowance should not cover the total amount since other waived items (leave credits, terminal leaves and subsistence allowance) must be considered in computing Personal Services limitation.[9]

The COA Regional Office, through Decision No. 2012-021 dated 28 August 2012,[10] denied petitioners' appeal and affirmed the subject NDs. It noted the Province of Iloilo had been made aware of the Personal Services limitation cap mandated by law through an earlier ND in 2004. Said ND was finally sustained by the Court and a Final Order of Adjudication issued by the COA on 18 March 2009. Even if the waived items are taken into account, the excess in Personal Services limitation would still be Php21,983,964.56.[11]

Ruling of the Commission Proper

On 28 August 2014, COA Proper promulgated the assailed decision affirming the COA Regional Office's ruling, thus:

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[8] *See* also *rollo*, pp. 18-165.

[9] *Id.* at 191.

[10] *Id.* at 190-193; penned by Commission on Audit Regional Office No. VI, Regional Director IV Salvador P. Isidero.

[11] *Id.* at 192-193.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED** for lack of merit. Accordingly, COA Region VI Decision No. 2012-021 dated August 28, 2012 is **AFFIRMED**.[12]

COA Proper reiterated the need for the LGU to follow the Personal Services limitation in granting PEI to its employees. Further, COA Proper brushed aside petitioners' claim of good faith since they are presumed to know the relevant provisions of the law.[13]

Petitioners moved for the reconsideration of the decision but COA Proper denied the same on 09 March 2015.[14]

Issues

Petitioners now come before the Court to assail COA Proper's decision, raising the following issues:

a) The Commission on Audit gravely erred in disallowing payments made by the Iloilo Provincial Government to its officials and employees for their Productivity Enhancement Incentive for Calendar Year 2009 and order the refund of the full amount without considering the amount in excess and the waived items.

b) The COA gravely erred in its findings that the officials and employees of Iloilo Provincial Government cannot be considered in goodfaith (sic) when the[y] received the subject incentive.[15]

Petitioners assert the legality of the grant of PEI to the officials and employees of the Province of Iloilo by virtue of a validly passed appropriations ordinance. They also claim good faith in the receipt of the benefit to avoid liability for the refund of the disallowed amounts.[16]

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[12] *Id.* at 212.

[13] *Id.* at 210-212.

[14] *Id.* at 213.

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

[16] *Id.* at 8.

Respondents, through the Office of the Solicitor General, argue that the present petition should be dismissed for being filed out of time. They maintain that payment of PEI to the employees of the Province of Iloilo violated the law and applicable rules and regulations. Lastly, petitioners cannot invoke good faith to avoid the refund of the disallowed amounts since an order of refund is supported by the principle of *solutio indebiti*.[17]

The focal issue in this case is whether the COA committed grave abuse of discretion in issuing the assailed decision and resolution.

Ruling of the Court

The petition lacks merit.

Petitioners failed to timely file the petition

At the outset, the Court agrees with respondents that the present petition was filed out of time. Rule 64 specifically provides:

> 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)

Clearly, the thirty-day reglementary period to assail the decision of COA Proper is merely interrupted by the filing of a motion for reconsideration. After receipt of the denial of the motion, petitioners are not given a fresh period of thirty (30) days but are allowed to file the petition within the remaining period, which shall not be less than five (5) days in any event.

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[17] *Id.* at 240-247.

Petitioners received the COA Proper Decision on 26 September 2014. It took them twelve (12) days to file a motion for reconsideration on 08 October 2014 and received its denial on 21 May 2015.[18] That gave them only eighteen (18) days, or until 08 June 2015, to file the proper petition before this Court.[19] However, they filed their petition only on 18 June 2015 on the mistaken belief they had thirty (30) days from 21 May 2015 before the lapse of the reglementary period.

Procedural rules should be treated with utmost regard and respect. They are designed to facilitate the adjudication of cases and de-clog our already crowded dockets. For petitioners' disregard of the reglementary period, the petition should already be dismissed. At any rate, the Court sees no reason to overturn the assailed decision as there was no abuse of discretion on the part of the COA in affirming the assailed NDs and in holding petitioners liable, as can be seen in the subsequent discussion below.

The assailed NDs were appropriately issued

The Court generally sustains the decisions of administrative authorities, especially one which is constitutionally-created, 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. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act in contemplation of law, as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.[20]

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[18] *Id.* at 1, 6.

[19] *Id.* at 1.

[20] *Veloso v. Commission on Audit*, 672 Phil. 419 (2011); G.R. No. 193677, 06 September 2011 [Per J. (now C.J.) Peralta].

To overturn the assailed decision, petitioners must therefore show that the COA committed grave abuse of discretion when it affirmed the NDs for the payment of PEI to the employees of the Province of Iloilo. Petitioners, however, failed in this task.

Administrative Order No. 276 dated 15 December 2009 authorized the grant of PEI to government employees, including those in the LGUs, for CY 2009. To clarify the guidelines in granting PEI to local government personnel, DBM Local Budget Circular No. 2009-93[21] was issued, hence:

2.0 Grant of the PEI

2.1 The respective sanggunian may grant the PEI to local government personnel depending on the financial capability of the local government unit (LGU). The PEI shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years.

x x x x

3.0 Funding Source

The PEI for local government personnel shall be charged against LGU funds, subject to the budgetary conditions and Personal Services limitation in LGU budgets pursuant to Sections 325(a) and 331(b) of R.A. No. 7160.

Meanwhile, Section 325(a) of RA 7160 provides:

SECTION 325. *General Limitations*. — The use of the provincial, city, and municipal funds shall be subject to the following limitations:

(a) **The total appropriations, whether annual or supplemental, for personal services of a local government unit for one (1) fiscal year shall not exceed forty-five percent (45%) in the case of first to third class provinces**, cities and municipalities, and fifty-five percent (55%) in the case of fourth class or lower, **of the total annual income from regular sources realized in the next preceding fiscal year**. The appropriations for salaries, wages, representation and

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[21] Clarificatory Guidelines on the Grant of the Productivity Enhancement Incentive (PEI) to Local Government Personnel for FY 2009, 17 December 2009.

transportation allowances of officials and employees of the public utilities and economic enterprises owned, operated, and maintained by the local government unit concerned shall not be included in the annual budget or in the computation of the maximum amount for personal services. The appropriations for the personal services of such economic enterprises shall be charged to their respective budgets;

x x x x (Emphasis supplied)

The term "next preceding fiscal year" is defined as the "fiscal year that is two (2) years before a budget year."[22]

According to the COA, the Province of Iloilo had already exceeded its Personal Services limitation based on the following computation:

Total income from revenue sources realized in 2007	Php	1,031,451,660.91
Personal Services (PS) Limitation Percentage		45%
Allowable PS Level/Cost	Php	464,153,247.41
Actual PS Cost before PEI	Php	502,854,446.31
Allowable PS Cost		464,153,247.41
Excess of Actual PS over Allowable PS Level/Cost	Php	38,701,198.90

Petitioners, in attacking the validity of the disallowance, points to the failure of the COA to consider other waived items which are not included in the computation of the Personal Service limitation. They, thus, present the following computation:

Excess over PS limitation	Php38,701,198.90
Less: Waived items	16,717,234.34
Excess over Personal Services	21,983,964.56[23]

A perusal of petitioners' computation shows the province still exceeded its Personal Services limitation even if the waived items are removed from the computation. In fact, this computation

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[22] DBM Local Budget Circular No. 98, 14 October 2011.

[23] *Rollo*, p. 9.

is already an implied admission that the province exceeded its Personal Services limitation mandated by Section 325(a) of RA 7160. The Court also notes that the COA already reviewed this particular argument and deemed it irrelevant in upholding the NDs:

> It will be noted that before the payment of the PEI of ₱102,700,000.00 PGI had already incurred an excess of ₱38,701,198.90 over the allowable PS cost and this includes the PS costs for waived items amounting to ₱16,717,234.34 (i.e., leave credits, terminal leave and subsistence allowance of health workers). Even if the amount of waived items is deducted from the actual PS cost (₱502,854,446.31 – ₱16,717,234.34) the adjusted actual cost of ₱486,137,211.97 still exceeds by ₱21,983,964.56 the allowable PS of ₱464,153,247.41. Thus, PGI was already precluded from incurring additional PS costs or benefits like PEI.[24]

The factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts. In the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[25] And, the COA did not act with grave abuse of discretion in disallowing the payment of PEI to the employees of the Province of Iloilo for CY 2009.

Having finally settled the propriety of disallowing the subject PEI benefit, the Court will now determine the liability of those identified in the NDs.

The approving and certifying officers were grossly negligent in allowing the disbursement of a higher amount of PEI despite exceeding the province's Personal Services limitation

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[24] *Id.* at p. 211.

[25] *Lumayna v. Commission on Audit*, 616 Phil. 929 (2009); G.R. No. 185001, 25 September 2009 [Per J. Del Castillo].

In the very recent case of *Madera v. Commission on Audit*,[26] the Court had the occasion to harmonize previous conflicting rulings as regards the liability to return disallowed amounts, thus:

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 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.

These guidelines were formulated after careful consideration of Sections 38[27] and 39,[28] in relation to Section 43[29] of the

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[26] G.R. No. 244128, 08 September 2020 [Per J. Caguioa].

[27] 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
(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

Administrative Code[30] whereby government officials who approved and certified the grant of disallowed benefits are held solidarily liable to return the amount thereof only when they acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties. Simply stated, "public officers are accorded with the presumption of regularity in the performance of their official functions – [t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it."[31]

Verily, the Court is firmly guided by the following considerations as mentioned in *Madera*:

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in

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subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

[28] 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.

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

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

[30] Executive Order No. 292, 25 July 1987.

[31] *Supra* at note 26.

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 operating with **furtive design or some motive of self-interest or ill will for ulterior purposes**. x x x[32]

In this case, the Court finds no justification for the failure of the approving and certifying officials to observe the province's Personal Services limitation cap. They failed to faithfully discharge their respective duties and exercise the required diligence resulting to the illegal and excessive disbursements paid to the employees of the Province of Iloilo. Even if the grant of PEI was not for a dishonest purpose, the patent disregard of the issuance by the DBM on the Personal Services limitation constitutes gross negligence, making them liable for the refund thereof.[33]

Gross negligence has been defined as negligence characterized by the **want of even slight care**, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a **conscious indifference to consequences** insofar as other persons may be affected.[34] As discussed by Senior Associate Justice Perlas-Bernabe, "[g]ross negligence may become evident through the non-compliance of an approving/authorizing officer of clear and straightforward requirements of an appropriation law, or budgetary rule or

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[32] *Id.* citing *Lumayna v. Commission on Audit*, G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per J. Del Castillo].

[33] *Sambo v. Commission on Audit*, G.R. No. 223244, 20 June 2017, 811 Phil. 344 [Per C.J. Peralta], citing *Casal v. Commission on Audit*, G.R. No. 149633, 30 November 2006, 538 Phil. 634 [Per J. Carpio-Morales].

[34] *Constantino v. Sandiganbayan*, G.R. Nos. 140656 & 154482, 13 September 2007, 559 Phil. 622 [Per J. Tinga].

regulation, which because of their clarity and straightforwardness only call for one [reasonable] interpretation."[35]

The approving and certifying officials of the Province of Iloilo in the instant petition should have been more cautious and meticulous in making sure the province had sufficient budget for the disbursement of Php102.7 million PEI considering they wanted to give out an amount five (5) times more than that granted to all other government branches and offices. To recall, the Executive, Legislative and Judicial branches, as well as the Office of the Ombudsman and other constitutional offices vested with fiscal autonomy, were only granted PEI amounting to Php10,000.00.

The Court notes no limit on the amount of PEI that may be granted by the LGUs to their personnel as can be seen in Administrative Order No. 276 dated 15 December 2009, to wit:

> **SECTION 3. PEI for Employees of LGUs**. Employees in the local government units (LGUs) may also be granted PEI by their respective *sanggunian*, depending on the LGU financial capability, chargeable to local government funds, subject to the Personal Services limitation in their respective local government budgets under RA No. 7160 and subject further to the conditions in Section 1 hereof. The PEI shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years.

This was echoed in DBM Local Budget Circular No. 2009-93 but with clarification that the benefit shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years. Evidently, the law specified for a fixed amount of Php10,000.00 for other branches and offices of the government while the LGUs were given a free hand in determining the suitable amount of PEI depending on their financial capability. Nonetheless, the rate given to other offices should have prompted the officials and officers of the province to initially review the conditions for the grant and carefully ensure

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[35] Separate Concurring Opinion of Senior Associate Justice Perlas-Bernabe, *Madera v. Commission on Audit*, p. 7.

compliance with the budgetary rules. Their failure to do so demonstrates a callous frame of mind without care of the financial health of the Province of Iloilo. Their indifference to the financial state of the province is made more evident by the amount in excess of the province's Personal Services limitation, which is already at Php38,701,198.90 even before the grant of PEI. With the additional disbursement of Php102.7M due to the subject benefit, the excess of the province's Personal Services limitation rose up to roughly Php141.4 million.

Respondents' argument that petitioners' "failure to observe the prescribed [Personal Services] limitations in granting the subject PEI despite previous disallowances of similar benefits also refutes their claim of good faith."[36] Said allegation is presumably referring to the following discussion by the COA:

> Moreover, a similar allowance granted in 2002 and was disallowed in 2004 for being violative of the PS cap limitation under Section 325(a) of RA 7160, was sustained by the Supreme Court, thus paving way for the issuance of a Final Order of Adjudication (now the COA Order of Execution under the 2009 Revised Rules of Procedure of the COA) by the General Counsel of COA on March 18, 2009. Clearly, the Province of Iloilo was well aware at the time of payment of the PEI in December, 2009 that the same benefit may be disallowed by the Auditors of the COA for the reason that the payment thereof is in violation of Section 325(a) of RA 7160.[37]

This argument is well-taken. A prior disallowance based on the same cause should have drawn the attention of the approving and certifying officers to be more vigilant and circumspect especially in cases pertaining to the same type of transactions. Such caveat applies even more in this case where the approving and certifying officers intended to grant a larger amount of benefit than the standard. As noted by Justice Caguioa, the approving and certifying officers should have also been guided by the Court's pronouncement in *Lumayna v. Commission on*

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[36] *Rollo*, p. 246.

[37] *Id.* at p. 192.

Audit,[38] where We disallowed the salary increase of municipal personnel since the municipality therein had already exceeded its Personal Services limitation. The following badges of whether an authorizing or certifying officer exercised the diligence of a good father of a family are also instructive:[39]

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

Verily, the Court in *Silang v. Commission on Audit*,[41] dismissed the claim of good faith by the approving officials and those directly involved in the release of the illegal disbursement for their failure to follow the requirements under applicable policies in relation to the valid grant of therein subject incentive. They are duty bound to have full knowledge of basic procedure as part of their shared fiscal responsibility under the law. Also, in *Technical Education and Skills Development Authority v. Commission on Audit*,[42] the Court considered the Director-General's blatant violation of clear provisions of the Constitution, the 2004-2007 GAAs and COA circulars equivalent to gross negligence amounting to bad faith.

Indeed, local government officials are accountable for the proper monitoring and maintenance of the financial affairs of

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[38] G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per J. Del Castillo].

[39] *Supra* at note 26.

[40] Separate Concurring Opinion of Justice Leonen, *Madera v. Commission on Audit*, p. 8.

[41] G.R. No. 213189, 08 September 2015, 769 Phil. 327 [Per J. Perlas-Bernabe].

[42] G.R. No. 204869, 11 March 2014, 729 Phil. 60 [Per J. Carpio].

their LGU and knowledge of basic procedure forms part of their shared fiscal responsibility, hence:

> Section 305. *Fundamental Principles*. — The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:
>
> x x x x
>
> (1) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units;[43]

We, likewise, recognize the cases cited by Justice Caguioa as examples of how the patent disregard of existing law or rules overcomes the presumption of good faith and necessitates the officers to return the disallowed amount:

> *Casal v. COA*:[44]
> The failure of petitioners-approving officers to observe all [the] issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof.
>
> *Manila International Airport Authority v. Commission on Audit*:[45]
> The same is not true as far as the Board of Directors. Their authority under Section 8 of the MIAA charter is not absolute as their exercise thereof is "subject to existing laws, rules and regulations" and they cannot deny knowledge of *SSS v. COA* and the various issuances of the Executive Department prohibiting the grant of the signing bonus. In fact, they are dutybound to understand and know the law that they are tasked to implement and their unexplained failure to do so barred them from claiming that they were acting in good faith in the performance of their duty.

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[43] *Silang v. Commission on Audit*, G.R. No. 213189, 08 September 2015, 769 Phil. 327 [Per J. Perlas-Bernabe].

[44] G.R. No. 149633, 30 November 2006, 538 Phil. 634 [Per J. Carpio-Morales].

[45] G.R. No. 194710, 14 February 2012, 681 Phil. 644 [Per J. Reyes].

Rotoras v. COA:[46]
Meanwhile, officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence; x x x

Department of Public Works and Highways, Region IV-A v. Commission on Audit:[47]
In this case, Cuaresma, as one of the certifying officers of DPWH IV-A, was duty-bound to ensure compliance with the conditions and limitations imposed in PSLMC Resolution No. 4, Series of 2002, in relation to DBM Budget Circular No. 2006-1, before she could issue certification on the availability of funds for the subject CNA Incentive. Unfortunately, she failed in this regard considering the non-observance with the limitation that savings from MOOE shall be the sole source of CNA Incentive. Hence, she must be held liable for the amount of the disallowance.

Undoubtedly, there is a clear showing of gross negligence on the part of herein approving and certifying officers for their failure to exercise the slightest care and with a conscious indifference in the discharge of their duties coupled with the lack of any badge of good faith available to their case. Therefore, the Court holds them solidarily liable for the disallowed amounts pursuant to Section 43, Chapter 5, Book IV of the Administrative Code, which reads:

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

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[46] G.R. No. 211999, 20 August 2019 [Per J. Leonen].

[47] G.R. No. 237987, 19 March 2019 [Per J. J.C. Reyes, Jr.].

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal. (Emphasis supplied)

The payees are liable to return the amount they received pursuant to principle of solutio indebiti

Proceeding now to the payees of the subject PEI benefit, the Court agrees with respondents' assertion on the applicability of the principle of *solutio indebiti*.

In *Madera*, the Court reverted to the basic standpoint of applying the principles of *solutio indebiti* and unjust enrichment, regardless of good faith of passive recipients, in determining liability for disallowed amounts.[48] These concepts are based on Article 2154[49] of the Civil Code, which provides that if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises. As aptly put by Associate Justice Inting in his Concurring Opinion to *Madera*, "payees are liable to return the amount simply because it was paid by mistake. No one should ever be unjustly enriched, especially if public funds are involved. Since their liability is a quasi-contract (solutio indebiti), good faith can never be an excuse. In other words, payees cannot be absolved from liability using the same reasoning to exempt approvers/certifiers, simply because the nature of their liability for the transaction is not the same."[50]

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[48] *Supra* note 26.

[49] Article 2154. 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.

[50] Concurring Opinion of Associate Justice Inting, *Madera v. Commission on Audit*, p. 11.

Further, the extent of the payees' liability to return is reinforced by COA Circular No. 2009-006 dated September 15, 2009[51] that articulates the liability of all persons identified in NDs:

SECTION 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:

x 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 the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.2 **The liability for audit charges shall be measured by the individual participation and involvement of public officers** whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

16.3 **The liability of persons determined to be liable under an ND/NC shall be solidary** and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

The Court has interpreted the above rules as validation of the notion that passive recipients, such as herein payees, shall only be liable to the extent of the amount they unduly received, while, as already discussed, officers who are guilty of bad faith, malice or gross negligence in the disbursement of the disallowed amounts shall be solidarily liable therein.[52]

Nevertheless, the Court still carved out some exceptions to the general application of *solutio indebiti* when applied to passive

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[51] Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, 15 September 2009.

[52] *Supra* at note 26.

recipients, namely: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; (3) where social justice or humanitarian considerations are attendant; and (4) other *bona fide* exceptions as may be determined on a case to case basis.[53]

The Court now focuses on the first exception since the other exceptions clearly cannot be applied to the present case. **Indeed, the sheer excessiveness of the amounts received by the employees, despite not having the budget therefor, prevents this Court from considering justifications premised on social justice considerations and equity.** We are disconcerted by the fact that the immense amount of Php102.7M only benefited a little more than 2,000 individuals. If at all, it was the Province of Iloilo, which presumably had a population of more or less 1 million people in 2009,[54] that was unduly prejudiced by the grant and it would be a great disservice if the Court would exonerate the passive recipients based on these extraordinary grounds.

Turning back to the first exception, the Court reiterates the recent discussion in *Abellanosa v. Commission on Audit*[55] where the details of how said exception were refined, *viz.*:

> As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:
>
> **(a) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and**
>
> **(b) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance**

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[53] *Id.*

[54] According to the 2015 Census, the Province of Iloilo had a population of 1.9 Million; https://www.iloilo.gov.ph/quick-facts, last accessed on 30 November 2020.

[55] G.R. No. 185806, 17 November 2020 (Resolution).

of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) – the *ponente* of *Madera* – aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood **to be limited to disbursements adequately supported by factual and legal basis, but were nonetheless validly disallowed by the COA on account of procedural infirmities.** As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations (*e.g.*, matters of form, or inadequate documentation supplied/rectified later on). x x x

x x x x

Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.[56]

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[56] *Id.*

It must, thus, be noted that in assessing whether a case falls within the said exception, the foremost consideration should be the legality of the expenditure. This presupposes all the legal conditions for the disbursement were met but for reasons not affecting the genuineness of the payout, such as lack of reportorial requirements or minor missteps in the procedure, the transaction had to be disallowed as a result of some form of irregularity. Only in these kinds of transactions may the payees be excused since the disbursements were legal and given in consideration of actual work. Put differently, the payees of the disbursement truly merited the receipt of the amount, and in the proper courts of events, would have received the benefit with no issues at all.

Should the grant of PEI to herein payees for CY 2009 be considered as genuinely given in consideration of services rendered thereby excusing them from returning the amounts they received?

The Court answers in the negative.

Here, there is no evidence or proof on record to serve as foundation for a factual determination of whether the PEI benefit given to the employees of the province has a clear, direct and reasonable connection to the actual performance of the recipients' work and functions. Needless to say, petitioners have the onus to forward evidence that the benefit they received falls under the exception of being given in consideration of actual services rendered pursuant to the nature of exceptions where strict application is observed. Such notion is likewise supported by the Court's ruling in *Lazaro v. Commission on Audit*,[57] where We held that "[i]t is not this Court's duty to construe their incomplete submissions and vague narrations to determine merit in their assertions."

More importantly, the grant of PEI to employees of the Province of Iloilo for CY 2009 was actually unauthorized for non-compliance with a legal condition, *i.e.*, financial capability

[57] G.R. Nos. 213323 & 213324, 22 January 2019 [Per J. Leonen].

to the LGU to grant PEI to its personnel. To recall, DBM Local Budget Circular No. 2009-93 stated that the respective *sanggunian* may grant PEI to their personnel "**depending on the financial capability of the local government unit**." Such financial capability was dependent on the amount available to the LGU before exceeding its Personal Services limit.

Needless to say, the Province of Iloilo did not have the required financial capability to grant PEI in an amount five (5) times more than the standard. The funding source of the benefit, as identified and mandated by law, had already been depleted even before granting the subject benefit. Hence, the disbursement is deemed unauthorized and illegal.

Otherwise stated, if the approving and certifying officers diligently followed the law and computed for their Personal Services limitation, they would not have granted the subject benefit and the payees would not have received the disallowed amounts. Following such premise, **the receipt of PEI by the payees herein was truly by mistake, and they are, therefore, required to return the amounts they personally received in accordance with the principle of *solutio indebiti*.**

WHEREFORE, the petition is **DENIED**. The Decision No. 2014-188 dated 28 August 2014 and Resolution dated 09 March 2015 of the Commission on Audit are hereby **AFFIRMED**, with clarification that the approving and certifying officers are solidarily liable for the disallowed amounts while the payees are liable only for the amounts they personally received.

SO ORDERED.

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

EN BANC

[G.R. No. 224469, January 5, 2021]

DIOSDADO SAMA *y* HINUPAS and BANDY MASANGLAY *y* ACEVEDA, *Petitioners*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

APPEARANCES OF COUNSEL

Legal Affairs Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This Petition for Review on *Certiorari*[1] assails the following dispositions of the Court of Appeals in CA-G.R. CR No. 33906:

a) Decision[2] dated May 29, 2015 affirming the conviction of petitioners Diosdado Sama *y* Hinupas and Bandy Masanglay *y* Aceveda and their co-accused Demetrio Masanglay *y* Aceveda for violation of Section 77 of Presidential Decree 705 (PD 705) or the *Revised Forestry Code of the Philippines*; and

b) Resolution[3] dated April 11, 2016 denying their motion for reconsideration.

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[1] *Rollo*, pp. 14-37.

[2] Penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Mariflor P. Punzalan-Castillo and Florito S. Macalino, all members of the Twelfth Division, *id*. at 79-89.

[3] CA *rollo*, pp. 143-144.

Proceedings before the Trial Court

By Information[4] dated May 27, 2005, petitioners and Demetrio were charged, as follows:[5]

INFORMATION

The undersigned Prosecutor, under oath, accuses DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, BANDY MASANGLAY y ACEVEDA, residents of Barangay Baras, Baco, Oriental Mindoro with the crime of Violation of Presidential Decree No. 705 as amended, committed as follows:

That on or about the 15th day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating and mutually helping one another did and then and there willfully, unlawfully, feloniously and knowingly cut with the use of unregistered power chainsaw, a *Dita* tree, a forest product, with an aggregate volume of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php20,000.00) PESOS, Philippine Currency.

Contrary to law.

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[4] *Rollo*, pp. 48-49.

[5] **SECTION 77. Cutting, Gathering and/or Collecting Timber or Other Forest Products without License. — Any person who shall cut, gather, collect, removed timber or other forest products from any forest land**, or timber from **alienable or disposable public land**, or **from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code**: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

The case was raffled to the Regional Trial Court (RTC)-Branch 39, Calapan City, Oriental Mindoro.[6]

On arraignment, all three (3) accused pleaded not guilty.[7] Thereafter, they filed a Motion to Quash Information[8] dated July 31, 2007, alleging among others, that they are members of the Iraya-Mangyan tribe, and as such, are governed by Republic Act No. 8371 (RA 8371), *The Indigenous Peoples Rights Act of 1997* (IPRA). By Order[9] dated August 23, 2007, the motion was denied for being a mere scrap of paper. Trial followed.

The Prosecution's Version

PO3 Villamor D. Rance (PO3 Rance) testified that on March 15, 2005, his team comprised of police officers and representatives of the Department of Environment and Natural Resources (DENR) surveilled Barangay Calangatan, San Teodoro, Oriental Mindoro to address illegal logging operations in the area.[10]

While patrolling the mountainous area of Barangay Calangatan, they heard the sound of a chainsaw and saw a tree slowly falling down. They immediately crossed the river and traced the source of the sound. In the area where the sound was coming from, they caught the accused in the **act of cutting a *dita* tree**. They also saw a bolo stuck to the tree that had been cut.[11]

The team inquired from the accused if they had a license to cut down the tree. The latter replied they had none. After informing the accused of their violation, the team invited them

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[6] *Rollo*, p. 57.

[7] *Id*.

[8] *Id*. at 52-55.

[9] Brief for Accused-Appellants, *CA rollo*, p. 33.

[10] Comment dated November 18, 2016; *rollo*, pp. 131-152.

[11] *Id*.

to the police station for further investigation. The team left the illegally cut tree in the area because it was too heavy. Pictures of the accused and the cut down tree were also taken.[12]

The prosecution offered in evidence the Joint Affidavit of the apprehending officers, Apprehension Receipt dated March 5, 2005, and pictures.[13]

The Defense's Version

Barangay Captain Rolando Aceveda (Barangay Captain Aceveda) of Baras, Baco, Oriental Mindoro testified that on March 15, 2005, he was resting at home when he noticed several police officers and DENR employees passing by. He inquired where they were headed. They told him they were on their way to Barangay Laylay in San Teodoro for surveillance on illegal loggers.

After two (2) or three (3) hours, the team returned. They had arrested and brought with them the accused who are **members of the Iraya-Mangyan indigenous peoples (IPs)**. The police officers told him they caught the accused cutting down a *dita* tree. He then asked the accused if the allegations against them were true. **They told him they cut the tree for the construction of the Iraya-Mangyan IPs' community toilet. He was aware of this construction and confirmed that the *dita* tree was planted within the ancestral domain of the Iraya-Mangyan IPs**.[14]

The defense did not present any documentary evidence.[15]

The Trial Court's Ruling

By Decision[16] dated August 24, 2010, the trial court convicted the accused, as charged, thus:

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[12] *Id*.

[13] Record, pp. 5-6.

[14] *Rollo*, pp. 58-59.

[15] *Id*. at 58.

[16] Penned by Judge Manuel C. Luna, Jr.; *id*. at 57-62.

ACCORDINGLY, this Court finds accused **DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, and BANDY MASANGLAY y ACEVEDA GUILTY** beyond reasonable doubt as (principals) of the crime charged in the aforequoted Information and in default of any modifying circumstance attendant, the Court hereby sentences said accused to an indeterminate penalty ranging from ***four (4) months and one (1) day of arresto mayor, as minimum, to three (3) years, four (4) months and twenty-one (21) days of prision correccional, as maximum***, and to pay the costs.

SO ORDERED.[17]

The trial court ruled that a *dita* tree with an aggregate volume of 500 board feet can be classified as "timber" within the purview of Section 68, now Section 77[18] of PD 705, as amended. Thus, cutting the *dita* tree without a corresponding permit from the DENR or any competent authority violated the law.

The trial court further held that a violation of Section 77 of PD 705 constituted *malum prohibitum*, and for this reason, the commission of the prohibited act is a crime in itself and criminal intent does not have to be established. **The trial court dismissed the defense of the accused that they had an IP right to log the *dita* tree** which **they intended** to use for the **construction of** a **communal toilet** for the **Iraya-Mangyan IPs**.

The trial court also faulted petitioners for not testifying and opting, instead, to present as their lone witness, Barangay Captain Aceveda, who allegedly had no personal and first-hand knowledge of the events which transpired before, during, and after the prohibited act.

Under Order[19] dated October 13, 2010, the trial court denied the accused's motion for reconsideration.[20] Only petitioners

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[17] *Id*. at 62.

[18] Renumbered in PD 705 as Section 77 pursuant to Section 7 of RA 7161 (1991); See *supra* for text of Section 77, PD 705 as amended.

[19] Record, p. 363.

[20] Appellants' Brief before the Court of Appeals, CA *rollo*, p. 34.

Diosdado Sama *y* Hinupas, Bandy Masanglay *y* Aceveda appealed from the trial court's ruling.

Proceedings before the Court of Appeals

Petitioners asserted anew their IP right to harvest the *dita* tree logs as part and parcel of the Iraya-Mangyan IPs' rights to cultural integrity and ancestral domain and lands. In particular, they claimed that: (1) pursuant to their cultural practices, they **followed the order of their indigenous community leaders** to log the *dita* tree to be used for the construction of **their communal toilet**; and (2) the land where the *dita* tree was planted was **part of their ancestral domain and lands** under RA 8371 or the *Indigenous People's Rights Act of 1997* ***(IPRA)***, and thus, the Iraya-Mangyan IPs have **communal dominion** over the fruits and natural resources found therein; (3) PO3 Rance did not actually witness their act of cutting the *dita* tree; and (4) the prosecution failed to prove they had conspired in cutting the tree.[21]

The Office of the Solicitor General (OSG) countered that: (1) there is no justification for IPs who cut a *dita* tree or any other tree without a permit that is special and distinct from any justification available to our compatriots; (2) even if the logging of trees is deemed part of the IPs' rights to cultural integrity or their ancestral domain or lands, the Iraya-Mangyan IPs failed to prove that as for them, the logging of a *dita* tree for building a communal toilet was justified by these rights; (3) PO3 Rance positively testified that the accused were the ones responsible in cutting down the *dita* tree; (4) it was not necessary for PO3 Rance to actually witness the accused fell the tree as the chain of events before, during, and after the incident led to the conclusion beyond a shadow of doubt that they had committed the offense charged; (5) the accused already admitted they had logged the *dita* tree intending to use the logs for the construction of a communal toilet for the Iraya-Mangyan indigenous

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[21] *Rollo*, pp. 79-89.

community; and (6) defense witness Barangay Captain Aceveda corroborated this admission.[22]

The Court of Appeals' Ruling

In its Decision[23] dated May 29, 2015, the Court of Appeals affirmed. It focused on the failure of the accused to present any license agreement, lease, or permit authorizing them to log the *dita* tree. It also faulted the accused for relying on *IPRA* as the source of their alleged rights to cultural heritage and ancestral domain and lands. For they purportedly failed to substantiate their claim that they are Iraya-Mangyan IPs and the land where the *dita* tree was situated is part of their ancestral domain and lands.

Under Resolution[24] dated April 11, 2016, the Court of Appeals denied the accused' motion for reconsideration.

The Present Petition

Petitioners now seek affirmative relief from the Court, reiterating their plea for acquittal.[25]

They maintain that their act of harvesting the *dita* tree is part and parcel of the Iraya-Mangyans' rights to cultural integrity and ancestral domain and lands. In particular, they profess that: (1) pursuant to their cultural practices, they followed the order of their indigenous community leaders to log the *dita* tree for the construction of their communal toilet; and (2) the land where the *dita* tree was planted was part of their ancestral domain and lands under the *IPRA*, thus, the Iraya-Mangyan IPs have communal dominion over the fruits and natural resources found therein. Additionally, as the Court of Appeals rejected their claim of being Iraya-Mangyan IPs, petitioners devote substantial space to emphasize what had not been disputed during the trial, that they are in fact Iraya-Mangyan IPs.

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[22] *Id*.

[23] *Id*.

[24] *Id*. at 39-40.

[25] *Supra* note 1.

In the alternative, petitioners stress that: (1) PO3 Rance did not actually witness their supposed act of cutting the *dita* tree; (2) the prosecution failed to prove they conspired in cutting the tree; and (3) the Court of Appeals misappreciated PO3 Rance's testimony identifying them as the ones who cut the *dita* tree.[26]

The People, through the OSG, seeks to dismiss the petition on the following grounds: (1) whether petitioners logged the *dita* tree is a question of fact beyond the jurisdiction of the Court *via* Rule 45 of the Rules of Court; (2) the Court of Appeals did not err in upholding the trial court's finding that conspiracy attended the commission of the offense charged; (3) there is no IP justification for cutting the *dita* tree which is special and distinct from other Filipinos; and (4) even if the logging of a tree is part of the IPs' rights to cultural integrity and ancestral domain and lands, the Iraya-Mangyan IPs failed to prove that **as for them**, there is indeed that particular IP justification to log a *dita* tree for building a communal toilet.[27]

In their Reply,[28] petitioners continue to claim that the area where the *dita* tree was located is owned by the Iraya-Mangyan indigenous cultural communities (**ICCs**) since time immemorial by virtue of their **"native title."** This "**native title**" has been formally recognized under *IPRA*. As a result, the DENR issued Certificate of Ancestral Domain (CADC) No. RO4-CADC-126 covering the ancestral domain and ancestral lands where petitioners cut the *dita* tree. There is a pending application for conversion of the CADC to a Certificate of Ancestral Domains Title (CADT) before the National Commission on Indigenous Peoples (NCIP).

Issues

Is there evidence beyond reasonable doubt, ***first***, of petitioners' ethnicity as Iraya-Mangyan IPs, ***and second***, of the elements

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[26] *Id*.

[27] Supra note 10.

[28] *Rollo*, pp. 158-167.

of violation of Section 77 of PD 705, as amended? As for the latter, is there evidence beyond reasonable doubt that:

1. the *dita* tree which petitioners had cut and collected is a specie of timber?;
2. the *dita* tree was cut and collected from a forest land, an alienable or disposable public land, or a private land, as contemplated in Section 77 of PD 705, as amended?, and,
3. the cutting of the *dita* tree was done without any authority granted by the State?

Ruling

We acquit.

Section 2 of Rule 133 of the *Rules of Court* defines the standard of **proof beyond reasonable doubt**:

SECTION 2. Proof Beyond Reasonable Doubt. — In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof **beyond a reasonable doubt** does **not mean** such a **degree of proof as, excluding possibility of error**, produces **absolute certainty**. **Moral certainty only is required**, or that degree of proof which **produces conviction in an unprejudiced mind**.

In practice, there is *proof beyond a reasonable doubt* where the judge can conclude: "All the above, as **established during trial, lead to no other conclusion than the commission of the crime** as prescribed in the law."[29] It has been explained:

With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines **reasonable doubt** as a **doubt for which one can give a reason, so long as the reason given is logically connected to the evidence**. An **inability to give such a reason for the doubt one entertains is the first and most obvious indication that the doubt held may not be reasonable**. In this respect, I agree with the United States Court of Appeals, District

[29] *Dinamling v. People*, 761 Phil. 356, 374 (2015).

of Columbia Circuit, in *U.S. v. Dale*, 991 F.2d 819 *(1993)* at p. 853: "The instruction . . . fairly convey[s] that the **requisite doubt** must be **'based on reason' as distinguished from fancy, whim or conjecture.**"

. . . .

> You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt," not beyond "any doubt." A **reasonable doubt** is exactly what it says -a **doubt based on reason**- on the **logical processes of the mind**. It is **not a fanciful** or **speculative doubt, nor** is it a **doubt based upon sympathy or prejudice**. It is **the sort of doubt which, if you ask yourself "why do I doubt?" — you can assign a logical reason by way of an answer**.
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> A **logical reason** in this context means **a reason connected either to the evidence itself**, including **any conflict you may find exists** after considering the evidence as a whole, or to **an absence of evidence** which in the circumstances of this case **you believe is essential to a conviction**.
>
> . . . .
>
> You must **not base your doubt** on the **proposition that nothing is certain or impossible or that anything is possible**. You are **not entitled to** set up a **standard of absolute certainty** and to say that the evidence does not measure up to that standard. In many things it is impossible to prove absolute certainty.[30]

First Issue: Petitioners are Iraya-Mangyan IPs who are a publicly known ICC inhabiting areas within Oriental Mindoro.

IPs in the Philippines inhabit the interiors and mountains of Luzon, Mindoro, Negros, Samar, Leyte, Palawan, Mindanao, and Sulu group of islands.[31] In ***Cruz v. Secretary of Natural***

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[30] *R. v. Lifchus*, 1996 CanLII 6631 (MB CA), <http://canlii.ca/t/1npkc>, retrieved on 2020-08-25.

[31] See J. Puno's Separate Opinion (*Cruz v. Secretary of Environment and Natural Resources*, Resolution, *Per Curiam*, En Banc), 400 Phil. 904, 947 (2000).

Resources,[32] the Court recognized the following ICCs residing in Region IV: Dumagats of Aurora, Rizal; Remontado of Aurora, Rizal, Quezon; **Alangan or *Mangyan*, Batangan, Buid or Buhid, Hanunuo, and *Iraya* of Oriental and Occidental Mindoro**; Tadyawan of Occidental Mindoro; Cuyonon, Palawanon, Tagbanua and Tao't bato of Palawan.[33]

In Oriental Mindoro, the **Iraya-Mangyan IPs** are publicly known to be residing and living in the mountains of the municipalities of Puerto Galera, San Teodoro, and Baco.[34]

The Information[35] stated that petitioners are residents of Barangay Baras, Baco, Oriental Mindoro. They supposedly logged a *dita* tree in Barangay Calangatan, San Teodoro, Oriental Mindoro. Notably, the municipalities of Baco and San Teodoro are areas where the Iraya-Mangyan IPs are publicly known to inhabit. They have continuously lived there since time immemorial.

The ***first evidence*** that petitioners are Iraya-Mangyan IPs is the testimony of Barangay Captain Aceveda of Baras, Baco, Oriental Mindoro. He testified in clear and categorical language that petitioners are Mangyans and the *dita* tree was grown on the land occupied by the Mangyans:

Q: Hours after the policemen and the employees of the DENR passed by what happened, Mr. Witness?
A: After more or less two to three hours later, they already returned ma'am.

Q: Did you notice anything unusual Mr. Witness?
A: Yes(,) ma'am.

Q: And what was that?
A: **They are accompanied by three (Mangyan) persons ma'am.**

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[32] *Id*.

[33] *Id*.

[34] *See* http://www.mangyan.org/content/iraya (last accessed: January 22, 2020).

[35] *Rollo*, pp. 48-49.

Q: **And could you identify before this Court who these three (Mangyans) were?**
A: **Yes**(,) ma'am.

Q: Could you identify the three?
A: **Diosdado Sama, Bandy Masanglay (,) and Demetrio Masanglay** ma'am.

Q: What was the reason that they were taken under the custody by these policemen?
A: They cut down trees or lumbers ma'am.

Q: And where was the felled log cut Mr. Witness according to them?
A: **In the land owned by the Mangyans ma'am.**

Q: Where in particular, Mr. Witness?
A: **Sitio Matahimik, Barangay Baras, Baco ma'am**.[36]

As barangay captain of Barangay Baras, Baco, Oriental Mindoro where petitioners and the Iraya-Mangyan IPs live, Aceveda is competent to testify that **petitioners are Iraya-Mangyan IPs** and **the *dita* tree was grown and found in the land where these IPs have inhabited since time immemorial**. For he has personally known the people living within his barangay, including petitioners and other Iraya-Mangyan IPs. When asked about petitioners, he positively identified these persons by their names and confirmed they are Iraya-Mangyan IPs.[37] He is fully knowledgeable of the territory and the people of his barangay. He too is a member of the Iraya-Mangyan IPs. **These matters were not refuted by the prosecution**.

The ***second evidence*** that petitioners are indeed Iraya-Mangyan IPs is the fact that the NCIP-Legal Affairs Office has been representing them from the initiation of this case until the present.[38] Records show that the NCIP-Legal Affairs Office

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[36] *Id*. at 69; See also *id*. at 84-85.

[37] *Id*.

[38] *See* Petitioners' Motion for Reconsideration to the RTC Decision dated September 08, 2010 signed by Atty. Jeanette A. Florita of the NCIP-Legal Affairs Office, *id*. at 63-71; *See also* Court of Appeals' Notice of Resolution

signed the motions and pleadings filed in petitioners' defense before the trial court, the Court of Appeals, and this Court, *viz.*: (1) Motion to Quash Information[39] dated July 31, 2007; (2) Motion for Reconsideration[40] of the adverse Decision dated September 08, 2010 of the RTC-Calapan City; (3) Supplement to the Motion for Reconsideration[41] dated January 17, 2009; (4) Motion for Reconsideration[42] dated July 06, 2015 of the adverse Decision of the Court of Appeals; (5) Petition for Review[43] dated May 16, 2014; and (6) Reply[44] dated March 02, 2017.

Under the *IPRA*, the NCIP is the lead government agency[45] for the protection, promotion, and preservation of IP/ICC identities and rights in the context of national unity.[46] As a

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dated April 11, 2016 addressed to Atty. Jeanette A. Florita of the NCIP-Legal Affairs Office as counsel for Accused-Appellants, *id*. at 38-40; *See also* Petition for Review dated May 16, 2014 signed by the Atty. Jeanette A. Florita of the NCIP-Legal Affairs Office, *id*. at 14-37.

[39] *Id*. at 52-55; signed by Atty. Leovigilda V. Guioguio.

[40] *Id*. at 63-71; signed by Jeanette A. Florita.

[41] *Id*. at 78-76; signed by Jeanette A. Florita.

[42] *Id*. at 90-109; signed by Atty. Jeanette A. Florita.

[43] *Id*. at 14-37; signed by Attys. Jeanette A. Florita and Rizzabel A. Madangeng.

[44] *Id*. at 158-169; signed by Atty. Jeanette A. Florita.

[45] RA 8371 (1997), *The Indigenous Peoples' Rights Act of 1997*. CHAPTER VII — National Commission on Indigenous Peoples (NCIP), Section 38. National Commission on Indigenous Cultural Communities/Indigenous Peoples (NCIP). — To carry out the policies herein set forth, there shall be created the National Commission on ICCs/IPs (NCIP), which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICCs/IPs and the recognition of their ancestral domains as well as the rights thereto. See infra for a discussion of the constitutional principle of preservation within the context of national unity.

[46] See infra for a discussion of the constitutional principle of preservation within the context of national unity.

result of its expertise, it has the primary jurisdiction to identify ICCs and IPs. Its Legal Affairs Office is mandated to represent and provide legal assistance to them:

> Section 46. (g) *Legal Affairs Office*. — There shall be a Legal Affairs Office which shall advice the NCIP on **all legal matters concerning ICCs/IPs and which shall be responsible for providing ICCs/IPs with legal assistance in litigation involving community interest**. It shall conduct preliminary investigation on the basis of complaints filed by the ICCs/IPs against a natural or juridical person believed to have violated ICCs/IPs rights. On the basis of its findings, it shall initiate the filing of appropriate legal or administrative action to the NCIP.[47]

In ***Unduran v. Aberasturi***,[48] the Court held that the NCIP may acquire jurisdiction over claims and disputes involving lands of ancestral domain only when they arise between or among parties belonging to the same ICCs or IPs. If the dispute includes parties who are non-ICCs or IPs, the regular courts shall have jurisdiction.

Thus, on the basis of the evidence on record, there is **no reason to doubt** that petitioners are Iraya-Mangyan IPs.

Second Issue: The prosecution was not able to prove the guilt of petitioners for violation of Section 77, PD 705, as amended, beyond reasonable doubt.

Section 77 of PD 705, as amended, punishes, among others, "[a]ny person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority . . . shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code. . . ."

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[47] The Indigenous Peoples' Rights Act of 1997, Republic Act No. 8371, October 29, 1997.

[48] 771 Phil. 536, 569 (2015); See also *Unduran v. Aberasturi*, 808 Phil. 795, 800 (2017).

This provision has evolved from the following iterations:

PD 705 (1975): "SEC. 68. Cutting, gathering and/or collecting timber or other products without license. — Any person who shall cut, gather, collect or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority **under a license agreement, lease, license or permit**, shall be **guilty of qualified theft** as defined and punished under Articles 309 and 310 of the Revised Penal Code. . . ."

PD 1559 (1978) amending PD 705: "SEC. 68. Cutting, gathering and/or collecting timber or other products without license. — Any person shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable or disposable public land or from private land **whose title has no limitation on the disposition of forest products found therein**, without any authority **under a license agreement, lease, license or permit**, shall be **punished with the penalty imposed under Arts. 309 and 310** of the Revised Penal Code. . . ."

EO 277 (1987) amending PD 705: "SEC. 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, **without any authority**, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be **punished with the penalties imposed under Articles 309 and 310** of the Revised Penal Code. . . ."

Section 7 of RA 7161 (1991) **repealed** what was **then** Section 77 of PD 705, as amended and **renumbered Section 68** of PD 705 **to Section 77** thereof *and* **replaced** the repealed Section 77. Note that the **repealed Section 77** was a carry-over from Section 297 of the *National Internal Revenue Code of 1977*, as amended which was **then incorporated** into PD 705 as Section 77 by EO 273 (1987) and RA 7161. This repealed Section 77, formerly Section 297 of the *National Internal Revenue Code of 1977*, read:

> Illegal cutting and removal of forest products. — [a] Any person who unlawfully cuts or gathers forest products in any forest lands without license or if under license, in violation of the terms hereof, shall, upon conviction for each act or omission, be fined for not less than ten thousand pesos but not more than one hundred thousand pesos or imprisoned for a term of not less than four years and one day but not more than six years, or both.

Construing the **original** iteration of **Section 77**, as **then Section 68** of the **original** version of PD 705, ***People v. CFI of Quezon (Branch VII)***[49] held that the elements of this offense are: 1) the accused **cut, gathered, collected or removed timber** or other forest products; 2) *the timber or other forest products cut, gathered, collected or removed* **belongs to** *the government or to any private individual*; and 3) the cutting, gathering, collecting or removing was **without any authority** granted by the State. Note that ***CFI of Quezon (Branch VII)*** included the **ownership** of the timber or other forest products **as** the **second element** of this offense. In the same decision, however, the Court also **ruled** that —

> Ownership is not an essential element of the offense as defined in Section [68] of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government.

Hence, we **do not consider** the **ownership** of subject timber or other forest products as an **element** of the offense under Section 68 of PD 705, now Section 77 of PD 705, as amended.

We **include one more element**: the timber or other forest product must have been cut, gathered, collected, or removed **from any forest land, or timber, from alienable or disposable public land or from private land**. This is **based on the language of the offense** as defined in either Section 68 or Section 77 which **expressly requires** the **source** of the timber or other forest products to be **from** these types of land.

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[49] 283 Phil. 78, 84 (1992).

1. Is the dita tree cut and collected by petitioners a specie of timber?

There is no issue that petitioners **did cut and collect a *dita* tree**. As a rule, we are bound by the factual findings of the trial court and the Court of Appeals. Petitioners themselves have not seriously challenged this factual finding. In fact, their sole witness confirmed that they had cut and collected the *dita* tree.

As for the nature of the *dita* tree, we rule that it constitutes timber. ***Merida v. People***[50] has explained that **timber** in PD 705 refers to:

> . . . **"wood used for or suitable for building or for carpentry or joinery."** Indeed, tree saplings or tiny tree stems that are too small for use as posts, panelling, beams, tables, or chairs cannot be considered timber. . . . Undoubtedly, the narra tree petitioner felled and converted to lumber was "timber" fit "for building or for carpentry or joinery" and thus falls under the ambit of Section 68 of PD 705, as amended.

Here, the *dita* tree was **intended for constructing** a **communal toilet**. It therefore qualifies **beyond reasonable doubt** as **timber** pursuant to Section 77.

2. Was the dita tree a specie of timber cut and collected from a forest land, an alienable or disposable public land, or a private land, as contemplated in Section 77 of PD 705, as amended?

Section 3 (d) of PD 705, as amended defines **forest lands** as including the public forest,[51] the permanent forest or forest

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[50] 577 Phil. 243, 256-257 (2008).

[51] PD 705 as amended, Section 3 (a): Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.

reserves,[52] and forest reservations.[53] Section 3 (c) defines **alienable and disposable lands** as "those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes."

Section 3 (mm) defines **private lands** indirectly as those lands with titled rights of ownership under existing laws, and **in the case of national minority, lands subject to rights of possession existing at the time a license is granted** under PD 705, **which possession may include places of abode and worship, burial grounds, and old clearings**, *but exclude* productive forests inclusive of logged-over areas, commercial forests, and established plantations of the forest trees and trees of economic values.[54]

As outlined, Section 77 requires **prior authority** for any of the acts of cutting, gathering, collecting, removing timber or other forest products **even from those lands possessed by IPs** falling **within the ambit** of the statute's definition of **private lands**.

Therefore, the **language** of Section 77 **incriminates** petitioners as they cut, gathered, collected, and removed **timber** from a *dita* tree from the land which they have called their own since time immemorial, which could either be a **forest land**, or an **alienable or disposable public land**, or a **private land**, as defined under PD 705, as amended, **without the requisite authority** pursuant to PD 705's licensing regime.

Justice Caguioa firmly opines, however, that ancestral domains and lands are **outside the ambit of Section 77** as these are

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[52] PD 705 as amended, Section 3 (b): Permanent forest or forest reserves refers to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes.

[53] PD 705 as amended, Section 3 (g): Forest reservations refer to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes.

[54] *Revised Forestry Code of the Philippines*, Presidential Decree No. 705, May 19, 1975.

neither forest land, alienable or disposable public land, **nor** private land.

He is **correct** that **ancestral domains and lands** are **unique, different,** and **a class of their own**. They have been referred to repeatedly as ***sui generis* property**, which sets into motion the construct or paradigm for determining the existence, nature, and consequences of IP rights.[55]

Nonetheless, the **text** of Section 77, as amended is **very clear**. It does not exempt from its coverage ancestral domains and lands. Too, as Chief Justice Peralta aptly points out, the term **"private land,"** which Section 77 **expressly** covers, **includes lands possessed by "national minorities"** such as their sacred and communal grounds. This term **should mean no other than** what we sensitively and correctly call today as the **IPs' ancestral domains and lands**.

To be sure, Section 77's reference to **forest lands** and even **alienable and disposable public lands** *could have also* **encompassed** ancestral domains and lands. This is **because** laws were **subsequently passed converting** some of the lands through the open, continuous, exclusive, and notorious occupation and cultivation of IPs *(then stereotypically referred to as members of the national cultural communities)* by themselves or through their ancestors **into** alienable and disposable lands of the public domain.[56]

Three more things.

First, Section 77 of PD 705 had been **amended a number of times** when IP rights were **burgeoning as an affirmative action component** – in 1987 (EO 277) and then again in 1991 (RA 7161), **but never** did the authorities **change** the **explicit coverage** of the **text** of **Section 77**. There was **not even an**

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[55] John Borrows and Leonard Rotman, *The Sui Generis Nature of Aboriginal Rights: Does it Make a Difference*, 1997 36-1 Alberta Law Review 9, 1997 CanLIIDocs 142, <http://www.canlii.org/t/skv8>, retrieved on 2020-09-13.

[56] *E.g.* PD 410 (1974).

attempt to **clarify** that *ancestral domains and lands are beyond Section 77's contemplation*, which the authorities could have easily done so.

Second, Section 77 was the **product of a less-than enlightened age**. The era of PD 705 even as amended **did not politely** call IP lands and communities the IPs' ancestral domains or ancestral lands but **tribal grounds** or **archaeological areas** of, or **lands occupied and cultivated** by, **members of the national cultural communities**, or **public or communal forests**. Section 77 was born and nurtured at a time when IPs were referred to as **"national minorities"** and the enlightened path then was to achieve their **redemption** through **assimilation** into the cultural bourgeoisie of the majority.

Justice Leonen's ***Ha Datu Tawahig v. Lapinid***[57] eloquently narrates this sorry stage in our legal history. So does Justice Lopez whose citations refer to our case law when we still called IPs **cultural minorities** whose status as such is derisively and condescendingly seen as a mitigating circumstance, or the IPs of the Cordilleras as uncivilized Igorots whose alleged backwardness was patronizingly used to lessen the criminal punishment meted. As observed by Justice Kapunan in ***Cruz v. Secretary of Natural Resources***,[58] "Philippine legal history, however, has not been kind to the indigenous peoples, characterized them as 'uncivilized,' 'backward people,' with 'barbarous practices' and 'a low order of intelligence.'"

This *was* the **construct** that permeated either the original or amended iterations of Section 77. This construct **rendered it unlikely**, to say the least, **the exclusion** from criminalization of the IPs or ICCs' cultural and customary practices within their ancestral domains and lands.

This context means that **Section 77 could not have *intended* to exclude** as **its language does not exclude** ancestral domains and lands.

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[57] G.R. No. 221139, March 20, 2019.

[58] Supra note 31 at 1025.

The **rise of aboriginal or IP law and jurisprudence** has **not** come about smoothly or even peacefully. This was because of the **need to correspond to traditional legal conceptions of property rights to receive the law's protection**.[59] Indeed, prior to the *IPRA*, ancestral domains and lands were conceived in this manner:

> It seems to be common ground that the ownership of the lands was "tribal" or "communal," but what precisely that means remains to be ascertained. In any case it was necessary that the argument should go the length of showing that **the rights**, whatever they exactly were, **belonged to the category of rights of private property**.[60]

This statement clearly exudes the **bias of a colonialist regime**. The notion that land ownership existed **only where it adhered to civil or common law concepts** implied their acceptance **at the expense of** indigenous principles of ownership. While indigenous laws were not completely rejected under this formulation, **only those forms of ownership which shared sufficient similarity** with the civil or common law were deemed capable of securing legal protection.

The original and amended versions of the current Section 77 were enacted under **this exact legal framework**. Hence, Section 77 **could not have been so enlightened and progressive** as to accord utmost respect to IP rights by excluding them from its criminal prohibition. It was **only later** that **we were enlightened** that the **proper method** of ascertaining IP rights necessitated a study of particular IP customs and laws. Under this test, IP rights and title are best understood by Iraya-Mangyan IPs **considering indigenous history and patterns of cultural practices and land usage**, rather than importing the preconceived notions of property rights under civil or common law. This enlightened view was **not** the **text of**, let alone, the **intent behind** Section 77.

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[59] John Borrows and Leonard Rotman, supra note 55.

[60] Re Southern Rhodesia, [1919] A.C. 211 (P.C.).

Third, as held in ***CFI of Quezon (Branch VII)***, the **intent** behind the original iteration of Section 77 as then Section 68 **rejected as an element of this offense**, the **ownership** of **the land** from which the timber or other forest products were cut, removed, gathered, or collected, **or** the **timber or other forest products** themselves as accessories of the land. This means that Section 68 or even Section 77 **covers any type of land** so long as timber or other forest products were taken therefrom, **regardless of an accused's property interests in the land**, when the **taking** was done **without any authority granted by the State**. It may also be inferred that **mere ownership** of the land does **not** amount to an **authority granted by the State** to justify the cutting, collection, removal, or gathering of timber or other forest products. As elucidated in ***CFI of Quezon (Branch VII)***:

> The **failure of the information to allege** that the **logs taken** were **owned by the state** is **not fatal**. It should be noted that the logs subject of the complaint were taken not from a public forest but from a private woodland registered in the name of complainant's deceased father, Macario Prudente. The fact that **only the state can grant a license agreement, license or lease does not make the state the owner of all the logs and timber products** produced in the Philippines **including those produced in private woodlands**. The case of *Santiago v. Basilan Company*, G.R. No. L-15532, October 31, 1963, 9 SCRA 349, clarified the matter on **ownership of timber in private lands**. This Court held therein:
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> "The defendant has appealed, claiming that it should not be held liable to the plaintiff because the timber which it cut and gathered on the land in question belongs to the government and not to the plaintiff, **the latter having failed to comply with a requirement of the law with respect to his property**.
>
> "The provision of law referred to by appellant is a section of the Revised Administrative Code, as amended, which reads:
>
> 'SEC. 1829. Registration of title to private forest land. — **Every private owner of land containing timber, firewood and other minor forest products shall register his title to the same** with the Director of Forestry. A list of such owners, with a statement of the boundaries of their property, shall be furnished by said Director to the Collector

of Internal Revenue, and the same shall be supplemented from time to time as occasion may require.'

'Upon application of the Director of Forestry the fiscal of the province in which any such land lies shall render assistance in the examination of the title thereof with a view to its registration in the Bureau of Forestry.'

"In the above provision of law, there is **no statement to the effect that noncompliance with the requirement would divest the owner of the land of his rights thereof and that said rights of ownership would be transferred to the government**. Of course, **the land which had been registered and titled in the name of the plaintiff** under that Land Registration Act **could no longer be the object of a forester license** issued by the Director of Forestry because **ownership of said land includes also ownership of everything found on its surface** (Art. 437, New Civil Code).

"Obviously, the **purpose of the registration** required in section 1829 of the Administrative Code is **to exempt the title owner of the land from the payment of forestry charges** as provided for under Section 266 of the National Internal Revenue Code, to wit:

'Charges collective on forest products cut, gathered and removed from **unregistered private lands**. — The charges above prescribed shall be collected on all **forest products cut, gathered and removed from any private land the title to which is not registered** with the Director of Forestry as required by the Forest Law; Provided, however, that **in the absence of such registration, the owner who desires to cut, gather and remove timber and other forest products from such land shall secure a license from the Director of Forestry** Law and Regulations. The **cutting, gathering and removing of timber and the other forest products from said private lands without license shall be considered as unlawful cutting**, gathering and removing of forest products from public forests and **shall be subject to the charges** prescribed in such cases in this chapter.'

"xxx xxx xxx.

"On the other hand, while it is admitted that the **plaintiff has failed to register the timber in his land as a private woodland** in accordance with the oft-repeated provision of the Revised Administrative Code, he **still retained his rights of ownership, among which are his rights to the fruits of the land and to exclude** any person from the enjoyment and disposal thereof (Art. 429. New Civil

Code) — the very rights violated by the defendant Basilan Lumber Company."

While it is only the state which can grant a license or authority to cut, gather, collect or remove forest products it does not follow that all forest products belong to the state. In the just cited case, **private ownership of forest products grown in private lands is retained under the principle in civil law that ownership of the land includes everything found on its surface.**

Ownership is not an essential element of the offense as defined in Section [68] of P.D. No. 705. Thus, the failure of the information to allege the true owner of the forest products is not material, it was sufficient that it alleged that the taking was without any authority or license from the government.

The concept of **ownership** adverted to in ***CFI of Quezon (Branch VII)*** is the civilist notion of ownership, that is, the one defined and expounded in our *Civil Code*.

We **hold** that this ruling in ***CFI of Quezon (Branch VII)*** **remains true** to the **amended** iterations of Section 68, now Section 77. **Ownership** of the land from which the timber or other forest products are taken is **neither** an element of the offense **nor** a defense to this offense – so long as **timber** or other forest products were **cut**, **collected**, gathered, or removed **from a forest land, an alienable or disposable public land, or private land** as defined in PD 705, as amended, **without any authority** granted by the State. As well, **ownership *per se*** of either the land or the timber or other forest products, as this right is understood in our *Civil Code*, **does not amount** to an **authority** granted by the State **to justify** the otherwise forbidden acts.

The **reason** for this ruling is the **relevant part** of Section 68 that **has remained unchanged** in its present version – the *actus reus* ("cut, gather, collect, remove"), the object of the *actus reus* (timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land), and the penalties for this offense ("shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code. . . ."). The role of **ownership** in the

determination of criminal liability for this offense **has not evolved**. In fact, if one were to examine the original Section 68, **ownership ought** to have been an **essential element** because **Section 68** was **then expressly treated** as a **specie of qualified theft**, a felony where ownership is an essential element.[61] Nonetheless, despite this penal typology of Section 68 then, ownership **was not considered** an element of this offense. With more reason, there having been **no change** in the wording of the law, on one hand, and there having been a **shift** in its **classification** into an offense **distinct from qualified theft**, on the other, **ownership** must **continue** to be a **non-essential consideration** in obtaining a conviction for this offense.

Another reason lies in the **purpose** that Section 68 and the entirety of PD 705, as amended seek to achieve. As stated in the **preamble** of PD 705, as amended:

> WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;
>
> WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;
>
> WHEREAS, it is also imperative to place emphasis not only on the utilization thereof but more so on the protection, rehabilitation and development of forest lands, in order to ensure the continuity of their productive condition;
>
> WHEREAS, the present laws and regulations governing forest lands are not responsive enough to support re-oriented government programs, projects and efforts on the proper classification and delimitation of the lands of the public domain, and the management,

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[61] See *e.g.*, *People v. Molde*, G.R. No. 228262, January 21, 2019: "The elements of qualified theft are: "(a) taking of personal property; (b) **that the said property belongs to another**; (c) that the said taking be done with intent to gain; (d) that it be done without the owner's consent; (e) that it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and] (f) that it be done with grave abuse of confidence."

utilization, protection, rehabilitation, and development of forest lands. . . .

Verily, State **regulation** of the utilization of forest lands **cuts above** ownership rights. This is in line with the **police power** of the State and its obligation to the entire nation to promote, protect, and defend its **right to a healthy and clean environment and ecology** as a third generation collective right.[62]

Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources[63] has confirmed the **public trust doctrine** that permeates the State's obligation *vis-à-vis* all natural resources such as water, and **by logical extension, timber and other forest products**:

The **vastness of this patrimony precludes the State from managing the same entirely by itself**. In the interest of quality and efficiency, **it thus outsources assistance from private entities, but this must be delimited and controlled for the protection of the general welfare**. Then comes into relevance **police power**, one of the inherent powers of the State. Police power is described in *Gerochi v. Department of Energy*:

[P]olice power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. It is the most pervasive, the least limitable, and the most demanding of the three fundamental powers of the State. The justification is found in the Latin maxim *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (so use your property as not to injure the property of others). **As an inherent attribute of sovereignty which virtually extends to all public needs, police power grants a wide panoply of instruments through which the State, as *parens patriae*, gives effect to a host of its regulatory powers.** We have held that **the power to "regulate"**

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[62] See *Sumudu Atappatu*, "The Right to Healthy Life or the Right to Die Polluted: The Emergence of a Human Right to a Healthy Environment under International Law," 16 Tulane Environmental Law Journal 65 (2002) at file:///C:/Users/SUPREME°%20COURT/Downloads/2083-Article%20Text-7012-1-10-20190403%20(1).pdf, last accessed November 4, 2020.

[63] G.R. No. 202897, August 6, 2019.

means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons.

Hand-in-hand with police power in the promotion of general welfare is the doctrine of *parens patriae*. It focuses on the **role of the state as a "sovereign" and expresses the inherent power and authority of the state to provide protection** of the person and property of a person *non sui juris*. Under the doctrine, **the state has the sovereign power of guardianship over persons of disability, and in the execution of the doctrine the legislature is possessed of inherent power to provide protection to persons *non sui juris* and to make and enforce rules and regulations as it deems proper for the management of their property**. *Parens patriae* means "father of his country," and **refers to the State as a last-ditch provider of protection to those unable to care and fend for themselves**. It can be said that Filipino consumers have become such persons of disability deserving protection by the State, as their welfare are being increasingly downplayed, endangered, and overwhelmed by business pursuits.

While the Regalian doctrine is state ownership over natural resources, police power is state regulation through legislation, and *parens patriae* is the default state responsibility to look after the defenseless, there remains a limbo on a **flexible state policy bringing these doctrines into a cohesive whole, enshrining the objects of public interest, and backing the security of the people, rights, and resources from general neglect, private greed, and even from the own excesses of the State**. We fill this void through the **Public Trust Doctrine**.

The Public Trust Doctrine, while derived from English common law and American jurisprudence, has firm Constitutional and statutory moorings in our jurisdiction. The doctrine speaks of an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water. Thus, "**[p]arties who acquired rights in trust property [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust.**" In *National Audubon Society v. Superior Court of Alpine County*, a California Supreme Court decision, it worded the doctrine as that which —

. . . .

Academic literature further imparts that **"[p]art of this consciousness involves restoring the view of public and state**

ownership of certain natural resources that benefit all. [. . .]" The "doctrine further holds that certain natural resources belong to all and cannot be privately owned or controlled because of their inherent importance to each individual and society as a whole. A clear declaration of public ownership, the doctrine reaffirms **the superiority of public rights over private rights for critical resources**. It impresses upon **states the affirmative duties of a trustee to manage these natural resources for the benefit of present and future generations** and embodies key principles of environmental protection: stewardship, communal responsibility, and sustainability."

In this framework, a relationship is formed — "the [s]tate is the trustee, which manages specific natural resources — the trust principal — for the trust principal — for the benefit of the current and future generations — the beneficiaries." "[T]he [S]tate has an **affirmative duty to take the public trust into account in the planning and allocation** of water resources, and to protect public trust uses whenever feasible." But with the birth of privatization of many basic utilities, including the supply of water, this has proved to be quite challenging. The State is in a continuing battle against lurking evils that has afflicted even itself, such as the excessive pursuit of profit rather than purely the public's interest.

These **exigencies forced** the **public trust doctrine** to **evolve from a mere principle** to a **resource management term** and **tool flexible** enough **to adapt to changing social priorities** and **address** the **correlative and consequent dangers** thereof. The **public** is regarded as the **beneficial owner of trust resources**, and **courts can enforce** the **public trust doctrine even against the government itself**.

In the exercise of its police power regulation, "the State **restricts the use of private property**, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. **Use of the property by the owner was limited**, but no aspect of the property is used by or for the public. The **deprivation of use can in fact be total** and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein."[64]

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[64] *Didipio Earth-Savers' Multi-Purpose Association, Inc. v. Gozun*, 520 Phil. 457, 478 (2006); *Philippine Ports Authority v. Cipres Stevedoring*

To conclude, the *dita* tree, as a specie of timber, was cut and collected **beyond reasonable doubt** from a **private land**, as contemplated in Section 77 of PD 705, as amended, or at the very least, a **forest land** or an **alienable or disposable public land** converted from ancestral lands, is covered, too, by PD 705, as amended. This notwithstanding that the land is also petitioners' ancestral domain or land which they own ***sui generis***.

3. Was the dita tree cut and collected without authority granted by the State?

There is, however, **reasonable doubt** that the *dita* tree was cut and collected **without any authority** granted by the State.

It is a general principle in law that in ***malum prohibitum*** case, **good faith** or **motive** is **not a defense** because the law **punishes the prohibited act** itself. The penal clause of Section 77 of PD 705, as amended punishes the cutting, collecting, or removing of timber or other forest products **only when** any of these acts is done **without lawful authority** from the State.

In ***Saguin v. People***,[65] the prohibited act of non-remittance of Pag-IBIG contributions is punishable **only when** this act was done **"without lawful cause"** or "with fraudulent intent." According to this case law, **lawful cause** may result from a **confusing** state of affairs engendered by **new legal developments** that **re-ordered** the way things had been previously done. In ***Saguin***, the **cause** of the **confusion** was the **devolution** of some powers in the health sector to the local governments. The **devolution** was **ruled** as a "**valid justification**" constituting

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and Arrastre Services, Inc., 501 Phil. 646, 663 (2005): "As 'police power is so far-reaching in scope, that it has become almost impossible to limit its sweep,' 48 whatever proprietary right that respondent may have acquired must necessarily give way to a valid exercise of police power, thus: 4. In the interplay between such a fundamental right and police power, especially so where the assailed governmental action deals with the use of one's property, the latter is accorded much leeway. That is settled law . . ."

[65] 773 Phil. 614, 628 (2015).

the "**lawful cause**" for the inability of the accused to remit the Pag-IBIG contributions. The **devolution** gave rise to **reasonable doubt** as to the **existence** of the offense's element of **lack of lawful cause**.

This doctrine in ***Saguin*** is reiterated in ***Matalam v. People***.[66] ***Matalam*** affirmed the doctrine that when an act is ***malum prohibitum***, "[i]t is the **commission of that act** as defined by the law, and **not the character or effect thereof**, that determines whether or not the provision has been violated." Citing ***ABS-CBN Corporation v. Gozon***,[67] ***Matalam*** **clarified** what this doctrine entails by **distinguishing** between the **intent** requirements of a ***malum in se*** felony and a ***malum prohibitum*** offense:

> The general rule is that acts punished under a special law are ***malum prohibitum***. "An act which is declared *malum prohibitum*, **malice** or ***criminal*** **intent** is **completely immaterial**."
>
> In contrast, crimes *mala in se* concern inherently immoral acts:
>
> . . . .
>
> "Implicit in the concept of ***mala in se*** is that of ***mens rea***." ***Mens rea*** is defined as "the **nonphysical element** which, combined with the act of the accused, makes up the crime charged. Most frequently it is **the criminal intent, or the guilty mind**[.]"

Crimes *mala in se* presuppose that the **person who did the felonious act had *criminal* intent** to do so, while **crimes *mala prohibita*** do **not require knowledge** or **criminal intent**:

> In the case of ***mala in se*** it is necessary, to constitute a punishable offense, for the person doing the act to **have *knowledge* of the *nature***

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[66] 783 Phil. 711, 728 (2016): "In *Saguin v. People*, we have said that non-remittance of Pag-IBIG Fund premiums without lawful cause or with fraudulent intent is punishable under the penal clause of Section 23 of Presidential Decree No. 1752, However, the petitioners in Saguin **were justified in not remitting the premiums on time** as the hospital they were working in **devolved to the provincial government** and there was **confusion** as to who had the duty to remit."

[67] 755 Phil. 709, 763-764 (2015).

of his act and to **have a *criminal* intent**; in the case of ***mala prohibita***, unless such words as "knowingly" and "willfully" are contained in the statute, **neither knowledge nor *criminal* intent is necessary**. In other words, **a person morally quite innocent and with *every intention of being a law-abiding citizen* becomes a criminal**, and liable to criminal penalties, **if he does an act prohibited by these statutes**.

Hence, "**[i]ntent *to commit the crime*** and **intent *to perpetrate the act*** must be **distinguished**. A person may **not have consciously intended to commit a crime; but he did intend to commit an act**, and **that act is**, by the very nature of things, **the crime itself**[.]" When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.

Volition, or **intent to commit the act**, is **different from criminal intent**. **Volition or voluntariness** refers to ***knowledge* of the *act being done*** [in contrast to ***knowledge* of the *nature* of his act**]. On the other hand, **criminal intent** — which is **different from motive**, or the **moving power for the commission of the crime** — refers to the **state of mind beyond voluntariness**. It is **this intent** that is being **punished** by crimes ***mala in se***.

Matalam recognized **that** the **character** or **effect** of the commission of the prohibited act, which is **not required** in proving a ***malum prohibitum*** case, is **different from** the **intent** and **volition to commit** the act which itself is prohibited if done **without lawful cause**. Justice Zalameda elucidates:

> The *malum prohibitum* nature of an offense, however, does not automatically result in a conviction. The prosecution must still establish that the accused had intent to perpetrate the act.
>
> Intent to perpetrate has been associated with the actor's volition, or intent to commit the act. Volition or voluntariness refers to knowledge of the act being done. In previous cases, this Court has determined the accused's volition on a case to case basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances.
>
> . . . .
>
> **[I]t is clear that to determine the presence of an accused's intent to perpetrate a prohibited act, courts may look into the**

meaning and scope of the prohibition beyond the literal wording of the law. Although in *malum prohibitum* offenses, the act itself constitutes the crime, courts must still be mindful of practical exclusions to the law's coverage, particularly when a superficial and narrow reading of the same with result to absurd consequences. Further, as in *People v. De Gracia* and *Mendoza v. People*, temporary, incidental, casual, or harmless commission of prohibited acts were considered as an indication of the absence of an intent to perpetrate the offense. (Emphasis in the original)

Here, as in ***Saguin***, as reiterated in ***Matalam***, there was **confusion** arising from the **new legal developments**, particularly, the recognition of the **indigenous peoples' (IPs) human rights normative system**, in our country. To paraphrase and import the words used in ***Saguin***, while *doubtless there was* voluntary and knowing act of cutting, removing, collecting, or harvesting of timber, we nonetheless consider the **reasonable doubt** engendered by the **new normative system** that the act was **done without State authority**, as required by Section 77 of PD 705, as amended.

The **confusion** and the resulting **reasonable doubt** on whether petitioners were authorized by the State **have surfaced** from the following circumstances:

One. In light of the **amendments to Section 77**, the **lawful authority** seems to be *probably* **more expansive** now than it previously was. Presently, the **authority** could be **reasonably** interpreted as being **inclusive** of **other modes of authority** such as the **exercise of IP rights**. As observed by Senior Associate Justice Perlas-Bernabe:

> Further, it must be noted that the original iteration of Section 77 (then Section 68 of Presidential Decree No. 705 [1975]) was passed under the 1973 Constitution and specifically described "authority" as being "*under a license agreement, lease, license or permit*." However, soon after the enactment of the 1987 Constitution or in July 1987, then President Corazon Aquino issued Executive Order No. 277 (EO 277) amending Section 77, which, among others, removed the above-mentioned descriptor, hence, leaving the phrase "*without any authority*," generally-worded. To my mind, **the amendment of Section 77 should be read in light of the new legal regime which**

gives significant emphasis on the State's protection of our IP's rights, which includes the preservation of their cultural identity. Given that there was no explanation in EO 277 as to the "authority" required, it may then be reasonably argued that the amendment accommodates the legitimate exercise of IP's rights within their ancestral domains. (Emphasis in the original)

The evolution of the penal provision shows that **authority** has actually become **more expansive and inclusive**. As presently couched, it no longer qualifies the "authority" required **but includes ANY authority**. As sharply noted by Senior Associate Justice Perlas-Bernabe, the phrasing of the law **has evolved from** requiring a "permit **from the Director**" in 1974 under PD 389, **to** a mere "license agreement, lease, license or permit" under PDs 705 and 1559 from 1975 to 1987, and to "**any** authority" from 1987 thereafter. Without any qualifier, the word **"authority" is now inclusive** of forms other than permits or licenses from the DENR. This doubt is **reasonable** as it arose from a **principled reading** of the amendments to Section 77, and this **doubt** ought to be **construed in petitioners' favor**.

Justice Caguioa vigorously posits as well that "[c]onsidering the foregoing, I have, from the very beginning, and still am, of the view that the 'authority' contemplated in PD 705, as amended, should no longer be limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA." He cogently reasons out:

To have a strict interpretation of the term "authority" under Sec. 77 of P.D. 705 despite the clear evolution of its text would amount to construing a penal law ***strictly against*** the accused, which cannot be countenanced. To stress, "[o]nly those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought."

More importantly, to construe the word "authority" in Sec. 77, P.D. 705 as excluding the rights of ICCs/IPs already recognized in

the IPRA would unduly undermine both the text and the purpose of this novel piece of legislation and significantly narrow down the rights recognized therein. (Emphasis in the original)

Two. It is an admitted fact that petitioners **relied upon** their **elders**, the **non-government organization** that was helping them, and **the NCIP**, that **they supposedly possessed the State authority** to cut and collect the *dita* tree as IPs for their indigenous community's communal toilet. Thus, **subjectively**,[68] their **intent** and **volition to commit** the **prohibited** act, that is **without lawful authority**, was rendered **reasonably doubtful** by these pieces of evidence showing their **reliance** upon these separate assurances of a State authority. As Justice Zalameda explains:

The peculiar circumstances of this case require the same liberal approach. The Court simply cannot brush aside petitioners' cultural heritage in the determination of their criminal liability. Unlike the accused in *People v. De Gracia*, petitioners cannot be presumed to know the import and legal consequence of their act. Their circumstances, specifically their access to information, and their customs as members of a cultural minority, are substantial factors that distinguish them from the rest of the population.

. . . .

As for the Mangyans, their challenges in availing learning facilities and accessing information are well documented. The location of their settlements in the mountainous regions of Mindoro, though relatively close to the nation's capital, is not easily reached by convenient modes of transportation and communication. Further, the lack of financial resources discourages indigenous families to avail and/or sustain their children's education. Certainly, by these circumstances alone, Mangyans cannot reasonably be compared to those in the lowlands in terms of world view and behavior.

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[68] See *e.g., Nunavut Teachers' Association v. Nunavut*, 2010 NUCJ 13 (CanLII), <http://canlii.ca/t/2c4sl>, retrieved on 2020-10-3: "The subjective element concerns a party's motive and intent. . . . The subjective element in the context of assessing good faith concerns the motive and intent of the parties. . . .

In the Mangyans' worldview, the forest is considered as common property of all the residents of their respective settlements. This means that they can catch forest animals, gather wood, bamboo, nuts, and other wild plants in the forest without the permission of other residents. They can generally hunt and eat animals in the forest, except those they consider inedible, such as pythons, snakes and large lizards. They employ swiddens or the kaingin system to cultivate the land within their settlements.

Based on the foregoing, to hold petitioners to the same standards for adjudging a violation of PD 705 as non-indigenous peoples would be to force upon them a belief system to which they do not subscribe. The fact that petitioners finished up to Grade 4 of primary education does not negate their distinct way of life nor justifies lumping IPs with the rest of the Filipino people. Formal education and customary practices are not mutually exclusive, but is in fact, as some studies note, co-exist in Mangyan communities as they thrive in the modern society. It may be opportune to consider that in indigenous communities, customs and cultural practices are normally transferred through oral tradition. Hence, it is inaccurate to conclude that a few years in elementary school results to IP's total acculturation.

As already discussed, Mangyans perceive all the resources found in their ancestral domain to be communal. They are accustomed to using and enjoying these resources without asking permission, even from other tribes, much less from government functionaries with whom they do not normally interact. Moreover, by the location of their settlements, links to local government units, or information sources are different from those residing in the lowlands. As such, the Court may reasonably infer that petitioners are unaware of the prohibition set forth in Sec. 77 of P.D. No. 705.

To my mind, an acknowledgment of the Mangyan's unique way of life negates any finding on the petitioners' intent to perpetrate the prohibited act. Taken with the fact that petitioners were caught cutting only one (1) dita tree at the time they were apprehended, and that it was done in obedience to the orders of their elders, it is clear that the cutting of the tree was a casual, incidental, and harmless act done within the context of their customary tradition.

. . . .

In my opinion, P.D. 705, which took effect in 1975, should be viewed under the prism of the 1987 Constitution which recognizes

the right of indigenous cultural communities. The noble objectives of P.D. 705 in protecting our forest lands should be viewed in conjunction with the Constitution's mandate of recognizing our indigenous groups as integral to our nation's existence. I submit that under our present Constitutional regime, courts cannot summarily ignore allegations or factual circumstances that pertain to indigenous rights or traditions, but must instead carefully weigh and evaluate whether these are material to the resolution of the case.

This does not mean, however, that the Court is creating a novel exempting circumstance in criminal prosecutions. It merely behooves the courts to make a case-to-case determination whether an accused's ties to an indigenous cultural community affects the prosecution's accusations or the defense of the accused. Simply put, the courts should not ignore indigeneity in favor of absolute reliance to the traditional purpose of criminal prosecution, which are deterrence and retribution.

In sum, the peculiar circumstances of this case compel me to take petitioners' side. I am convinced that petitioners' intent to perpetrate the offense has not been established by the prosecution with moral certainty. For this reason, I vote for petitioners' acquittal.

Objectively,[69] their reliance **cannot be faulted** because IP rights have long been **recognized** at **different levels** of our legal system – the ***Constitution***, the **statutes** like *IPRA* and a host of others like the ones mentioned by Justice Leonen in his *Opinion*, the sundry **administrative regulations** (one of which Chief Justice Peralta and Justice Caguioa have taken pains to outline) which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' ***sui***

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[69] *Nunavut Teachers' Association v. Nunavut*, 2010 NUCJ 13 (CanLII), <http://canlii.ca/t/2c4sl>, retrieved on 2020-10-3: ". . . the objective element relates to the party's bargaining with a view to concluding a collective agreement. The Board approved the words from ROK Tree (1999) Ltd. (Re), [2000] N.B.L.E.B.D. No. 14, 57 C.L.R.B.R. (2d) 293, that the efforts made to conclude a collective agreement are to be "measured against an objective standard, that of a rational and informed discussion within the framework of the statutory regime. . . . good faith bargaining includes rational discussion, consultation and reasonable efforts. Judging the objective component of good faith bargaining requires the judge to assess how the parties carried on the rational discussion, consultation and reasonable efforts."

generis ownership of ancestral domains and lands, the **international covenants** like the *United Nations Declaration on the Rights of Indigenous Peoples*, of which our country is a signatory, and **Philippine** and **international jurisprudence** which identifies the forms and contents of IP rights.

We hasten to add though that this **recognition** has **not** transformed into a **definitive** and **categorical** rule of law on its **impact** as a **defense** in criminal cases against IPs arising from the exercise of their IP rights. The ensuing **unfortunate confusion** as to true and inescapable merits of these rights in criminal cases **justifies** the claim that petitioners' guilt for this ***malum prohibitum*** offense is **reasonably doubtful**.

As succinctly tackled by Justice Caguioa in his opinion: "In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not the petitioners were well-within their rights when they cut the *dita* tree, such doubt must be resolved to stay the Court's hand from affirming their conviction." He further opines that the invocation of IP rights in the case at bar has "risen to the heights of contested constitutional interpretations. . . ." While we do not share Justice Caguioa's opinion in full, we agree with him at least that there is **reasonable doubt** as regards the accused' guilt of the offense charged. Thus:

> On this note, it may be well to remember that the case of *Cruz* which dealt with the constitutionality of the provisions of the IPRA was decided by an equally divided Court. This only goes to show that there are still nuances concerning the rights of IPs within their ancestral land and domain that are very much open to varying interpretations. Prescinding from this jurisprudential history, perhaps the instant case may not provide the most sufficient and adequate venue to resolve the issues brought about by this novel piece of legislation. It would be the height of unfairness to burden the instant case against petitioners with the need to resolve the intricate Constitutional matters brought about by their mere membership in the IP community especially since a criminal case, being personal in nature, affects their liberty as the accused.

The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, *vis-à-vis* forestry laws, has failed or delivered on its fundamental promise. **That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether or not they are guilty of an offense, but whether or not there was even an offense to speak of.** At most, this doubt only further burdens the fate of the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity.

At the very least, this doubt must merit their acquittal. (Emphases in the original)

To be precise, the **IP rights** we are alluding to are the rights to maintain their **cultural integrity** and to benefit from the **economic benefits** of their ancestral domains and lands, **provided** the **exercise** of these rights is **consistent with protecting** and **promoting equal rights of the future generations** of IPs. To stress, it is the **confusion** arising from the **novelty** of the **content**, **reach**, and **limitation** of the **exercise of these rights** by the accused in **criminal cases** which **justifies** their acquittal for their **otherwise prohibited** act.

i. Constitutional basis of IP rights

Ha Datu Tawahig v. Lapinid[70] explains the expansive breadth of the legal recognition of IP rights by our ***Constitution***:

In turn, the Indigenous Peoples' Rights Act's provisions on self-governance and empowerment, along with those on the right to ancestral domains, social justice and human rights, and cultural integrity, collectively reflect and bring to fruition the 1987 Constitution's aims of preservation.

The 1987 Constitution devotes six (6) provisions "which insure the right of tribal Filipinos to preserve their way of life":

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[70] Supra note 57.

ARTICLE II
Declaration of Principles and State Policies

SECTION 22. The State **recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development**.

x x x x x x x x x

ARTICLE VI
The Legislative Department

x x x x x x x x x

SECTION 5. . . .

x x x x x x x x x

(2) The **party-list representatives** shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, **indigenous cultural communities**, women, youth, and such other sectors as may be provided by law, except the religious sector.

x x x x x x x x x

ARTICLE XII
National Economy and Patrimony

x x x x x x x x x

SECTION 5. The State, **subject to the provisions of this Constitution and national development policies and programs**, shall **protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being**.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

x x x x x x x x x

ARTICLE XIII
Social Justice and Human Rights

x x x x x x x x x

SECTION 6. The State **shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources**, including lands of the public domain under lease or concession suitable to agriculture, **subject to** prior rights, homestead rights of small settlers, and **the rights of indigenous communities to their ancestral lands**.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

x x x x x x x x x

ARTICLE XIV
Education, Science and Technology, Arts, Culture, and Sports
Education

x x x x x x x x x

SECTION 17. The State shall **recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions**. It **shall consider these rights in the formulation** of national plans and policies.

x x x x x x x x x

ARTICLE XVI
General Provisions

x x x x x x x x x

SECTION 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

The **Indigenous Peoples' Rights Act echoes the constitutional impetus for preservation**. Its declaration of state policies reads:

SECTION 2. Declaration of State Policies. — The State shall **recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs)** hereunder enumerated **within the framework of the Constitution**:

a) The State shall **recognize and promote the rights of ICCs/IPs within the framework of national unity and development**;

b) The State shall **protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well-being** and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall **recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions**. It shall **consider these rights in the formulation of national laws and policies**;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;

e) The State shall **take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity**, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

f) The State **recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP participation in the direction of education, health, as well as other services of ICCs/IPs**, in order to render such services more responsive to the needs and desires of these communities.

Towards these ends, the State shall **institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains**.

The **1987 Constitution's attitude toward indigenous peoples, with its emphasis on preservation**, is a **marked departure from** regimes under the 1935 and 1973 constitutions, which were typified by **integration**. **Integration**, however, was still "**like the colonial policy of assimilation** understood in the **context of a guardian-ward relationship**." Like **assimilation**, it was **eager to have**

indigenous peoples attune themselves to the mainstream. This **eagerness inevitably tended to measures that eroded indigenous peoples' identities**.

Spanish and American colonial rule was characterized by the "need to impart civilization[.]" In *People v. Cayat*:

As early as 1551, the Spanish Government had assumed an unvarying solicitous attitude towards these inhabitants, and in the different laws of the Indies, their concentration in so-called "reducciones" (communities) had been persistently attempted with the end in view of according them the "spiritual and temporal benefits" of civilized life. Throughout the Spanish regime, it had been regarded by the Spanish Government as a sacred "duty to conscience and humanity" to civilize these less fortunate people living "in the obscurity of ignorance" and to accord them the "moral and material advantages" of community life and the "protection and vigilance afforded them by the same laws." (Decree of the Governor-General of the Philippines, Jan. 14, 1887.) This policy had not been deflected from during the American period. President McKinley in his instructions to the Philippine Commission of April 7, 1900, said:

In dealing with the uncivilized tribes of the Islands, the Commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government, and under which many of those tribes are now living in peace and contentment, surrounded by civilization to which they are unable or unwilling to conform. Such tribal government should, however, be subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.

The 1935 Constitution was silent on indigenous peoples. However, it was under the 1935 Constitution that Republic Act No. 1888, creating the Commission on National Integration, was passed. Its title and declaration of policy reveal a predisposed view of "Non-Christian Filipinos" or "National Cultural Minorities" as **uncultivated, and whose advancement depended on the extent to which they were integrated to the mainstream**:

REPUBLIC ACT NO. 1888

AN ACT TO EFFECTUATE IN A MORE RAPID AND COMPLETE MANNER THE ECONOMIC, SOCIAL, MORAL AND POLITICAL AND ADVANCEMENT OF THE NON-CHRISTIAN FILIPINOS OR NATIONAL CULTURAL MINORITIES AND TO RENDER REAL, COMPLETE AND PERMANENT THE INTEGRATION OF ALL SAID NATIONAL CULTURAL MINORITIES INTO THE BODY POLITIC, CREATING THE COMMISSION ON NATIONAL INTEGRATION CHARGED WITH SAID FUNCTIONS

SECTION 1. It is hereby declared to be the policy of Congress to foster, accelerate and accomplish by all adequate means and in a systematic, rapid and complete manner the moral, material, economic, social and political advancement of the Non-Christian Filipinos, hereinafter called National Cultural Minorities, and to render real, complete and permanent the integration of all the said National Cultural Minorities into the body politic.

The 1973 Constitution devoted one (1) provision to "national cultural minorities." Its Article XV, Section 11 read:

SECTION 11. The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of State policies.

Section 11 began to deviate from the rigid view that it is indigenous people who must reconcile themselves with the mainstream. It expressly recognized that national cultural minorities were typified by their "customs, traditions, beliefs, and interests[.]" More important, unlike prior legal formulations, it committed to national cultural minorities the "consider[ation of their] customs, traditions, beliefs, and interests . . . in the formulation and implementation of State policies."

Under the 1973 Constitution, former President Ferdinand E. Marcos enacted Presidential Decree No. 1414, creating the Office of the Presidential Assistant on National Minorities. With **its policy of "integrat[ing] into the mainstream . . . groups who seek full integration into the larger community**, and at the same time protect[ing] the rights of those who wish to preserve their original lifeways beside that larger community[,]" Presidential Decree No. 1414 **maintained the drive for integration, but conceded that indigenous peoples may want preservation rather than admission**.

The 1987 Constitution reorients the State toward enabling indigenous peoples to maintain their identity. It declines articulating policies of integration and assimilation and transcends the 1973 Constitution's undertaking to "consider." **Instead, it commits to not only recognize, but also promote, "the rights of indigenous cultural communities."** It **expressly aims to "preserve and develop their cultures, traditions, and institutions.** It **elevates to the level of constitutional text terms such as "ancestral lands" and "customary laws."** Because the Constitution is the "fundamental and organic law of the land," **these terms' inclusion in the Constitution renders them integral to the Republic's being. Through the same inclusion, the State manifestly assents to the distinctiveness of indigenous peoples, and undertakes obligations concomitant to such assent.**

With the 1987 Constitution in effect, **the Indigenous Peoples' Rights Act was adopted precisely recognizing that indigenous peoples have been "resistan[t] to political, social[,] and cultural inroads of colonization, non-indigenous religions and cultures, [and] became historically differentiated from the majority of Filipinos."**

. . . .

It was never **the Indigenous Peoples' Rights Act's** intent to facilitate such miscarriage of justice. Its view of self-governance and empowerment is not myopic, but is **one that balances**. **Preservation is pursued in the context of national unity and is impelled by harmony with the national legal system**. Customary laws cannot work to undermine penal statutes designed to address offenses that are an affront to sovereignty.

ii. Spectrum of IP rights

Conceptually, **IP rights** fall along a **spectrum**, the **cornerstone** of which is **their degree of connection to the land**.[71] Land is the **central element** of their existence.[72] Civil

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[71] *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, 2009 BCSC 1494 (CanLII), <http://canlii.ca/t/26fk1>, (last accessed on March 27, 2020); Prof. Mario Victor "Marvic" F. Leonen, "The Indigenous Peoples' Rights Act: An Overview of its Contents," PHILJA Judicial Journal (2002).

[72] *Id*.

law land titles do not exist in its economic and social system. The concept of individual land ownership under our civil law is different and distinct from their rules on land ownership.[73]

Thus, normatively, under ***IPRA***:

> SECTION 4. Concept of Ancestral Lands/Domains. — Ancestral lands/domains shall **include such concepts of territories which cover not only the physical environment but the total environment including the spiritual and cultural bonds to the areas** which the ICCs/IPs possess, occupy and use and to which they have claims of ownership.

And:

> SECTION 5. Indigenous Concept of Ownership. — **Indigenous concept of ownership** sustains the view that **ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity**. . . .

At **one end**, there are those **IP rights** which are ***practices, customs, and traditions integral to the distinctive IP culture*** of the group claiming the right.[74] The **"occupation and use of the land"** where the **activity is taking place**, however, is ***not "sufficient to support a claim of title*** to the land."[75] Nevertheless, **these activities receive constitutional protection**.[76]

In the **middle**, there are **activities** which, **out of necessity, take place on land** and indeed, **might be intimately related to a particular piece of land**.[77] Although a particular indigenous cultural community **(ICC)** may **not be able to demonstrate title to the land**, it may nevertheless have **a *site-specific right to engage in a particular activity***.[78] Even where an IP right

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[73] *Id*.

[74] *Id*.

[75] *Id*.

[76] Supra note 57.

[77] *Ahousaht Indian Band and Nation v. Canada (Attorney General)*, supra.

[78] *Id*.

exists on a tract of land to which the ICC in question does not have title, that ***right may well be site specific,*** **with the result that it can be *exercised only upon that specific tract* of land**.[79] For **example**, if an ICC demonstrates that **hunting on a specific tract of land** was an ***integral part of their distinctive culture*** then, even if the **right exists apart from title** to that tract of land, the IP right to hunt is nonetheless defined as, and limited to, the **right to hunt on the specific tract of land**.

At the **other end of the spectrum**, there is the **IP title itself**.[80] **IP title** confers **more than the right to engage in site-specific activities** which are **aspects of the practices, customs, and traditions** of distinctive IP cultures.[81] **IP site-specific rights** can be made out even if **IP title** cannot; what **IP title** confers is the **right to the land itself**.[82]

iii. IP right to preserve cultural integrity as a free-standing right independent of IP claim or title to ancestral domains or lands

An **IP right to preserve cultural integrity** is **manifested** through an **activity** that is an **element** of a **practice**, **custom**, or **tradition** that is **integral to the distinctive culture** of the IPs claiming the right. This requires establishing the **existence of the ancestral practice, custom, or tradition advanced** as supporting the claimed right; confirming that the **ancestral practices, customs, or traditions** were **integral to** the **distinctive culture** of the **claimant's pre-contact in Philippine society**, *i.e.*, prior to contact with colonizers and non-IP Filipinos, *or* **subsequent thereto**, to the **survival** of the **distinctive culture** of the **claimant's ICC in Philippine society**; and proving that **reasonable continuity** exists **between** the **pre-contact** practice, or **post-contact** practice for the claimant's ICC's survival, **and** the **contemporary claim**.

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[79] *Id*.

[80] *Id*.

[81] *Id*.

[82] *Id*.

An IP right to preserve cultural integrity **entitles** the right holder **to perform the practice** or **custom or tradition** in its **present form**. This means that **the same sort of activity** is **carried on** in the **modern economy by modern means**. To illustrate, the **right to harvest wood for the construction of temporary shelters** must be allowed to evolve into a **right to harvest wood *by modern means* to be used in the construction of *modern dwellings***. Here, petitioners strongly claim that their **IP right to preserve cultural integrity** entitled them to log the *dita* tree for building the communal toilet as a lawful exercise and manifestation of this IP right. As shown, this claim did not just come from thin air but from the bundle of their real constitutional and statutory right to cultural heritage.

iv. IP right to preserve cultural integrity in relation to or as a manifestation of IP claim or title to ancestral domains and lands

An **IP title** encompasses the **right to exclusive use and occupation of the land** held pursuant to that title **for a variety of purposes** including **non-traditional purposes**.[83] **IP title** confers **ownership rights similar to** those associated with **fee simple**, including the **right to decide how the land will be used**; the **right of enjoyment and occupancy of the land**; the **right to possess the land**; the **right to the economic benefits of the land**; and **the right to pro-actively use and manage the land**.[84]

These rights and the other rights concomitant to an **IP title** are specified in the *IPRA*:

CHAPTER III
Rights to Ancestral Domains

SECTION 7. Rights to Ancestral Domains. — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

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[83] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (CanLII), [2014] 2 SCR 257, <http://canlii.ca/t/g7mt9>, retrieved on 2020-03-27.

[84] *Id*.

a) Right of Ownership. — **The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements** made by them at any time within the domains;

b) Right to Develop Lands and Natural Resources. — Subject to Section 56 hereof, **right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources** in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the **right to an informed and intelligent participation in the formulation and implementation of any project**, government or private, that will affect or impact upon the ancestral domains and **to receive just and fair compensation for any damages** which they may sustain as a result of the project; and the **right to effective measures by the government to prevent any interference with, alienation and encroachment** upon these rights;

c) Right to Stay in the Territories. — The **right to stay in the territory and not to be removed therefrom**. No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury;

. . . .

e) Right to Regulate Entry of Migrants. — **Right to regulate the entry of migrant settlers and organizations into the domains**;

. . . .

g) Right to Claim Parts of Reservations. — The **right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common public welfare and service**; and

h) Right to Resolve Conflict. — Right to resolve land conflicts in accordance with customary laws of the area where the land is located, and only in default thereof shall the complaints be submitted to amicable settlement and to the Courts of Justice whenever necessary.

SECTION 8. **Rights to Ancestral Lands**. — The right of ownership and possession of the ICCs/IPs to their ancestral lands shall be recognized and protected.

a) Right to transfer land/property. — Such right shall include the **right to transfer land or property rights to/among members of the same ICCs/IPs**, subject to customary laws and traditions of the community concerned.

b) Right to Redemption. — In cases where it is shown that the transfer of land/property rights by virtue of any agreement or devise, to a non-member of the concerned ICCs/IPs is **tainted by the vitiated consent** of the ICCs/IPs, or is transferred for an **unconscionable consideration or price, the transferor ICC/IP shall have the right to redeem the same within a period not exceeding fifteen (15) years from the date of transfer**.

But **IP title** is **not** the **same** as the concept of **ownership in the *Civil Code***. In his 2002 Philippine Judicial Academy (PHILJA) Judicial Journal article entitled "Introducing the Indigenous Peoples' Rights Act (IPRA)," one of the leading constitutionalists in the country, Professor Sedfrey M. Candelaria, clarified that the **civil law concept of land ownership** is **non-existent within the IP sector**.

Traditionally, **under civil law**, ownership over property carries with it a bundle of rights comprised of *jus possidendi*, *jus abutendi*, *jus dispodendi*, *jus utendi*, *jus fruendi*, *jus vindicandi*, and *jus accessiones*. In contrast, **IP title** is ***sui generis*** as it carries an **important restriction** — it is **collective** and **communal title** held **not only for the present generation but**

for all succeeding generations.[85] What IPs have is the **concept of mutual sharing of resources wherein no individual, regardless of status, is without sustenance**. This means the land and its resources **cannot be alienated or encumbered** except to the State *and* in ways that would **prevent future generations** of the group from using and enjoying it.[86] **Nor** can the **land be developed** or **misused** in a way that would **substantially deprive future generations** of the benefit of the land[87] though some changes even permanent changes to the land may be possible. These uses must also be **reconciled with** the **ongoing communal nature** of the IPs or ICCs' attachment to the land.[88]

Professor (now Justice) Leonen, a highly esteemed scholar in constitutional law and the law on land and natural resources, **shares** this understanding about the foregoing limitations to the ***sui generis*** IP title. He **underscores** this **limitation** by **highlighting** the **indigenous concept of ownership** as expressed in Section 5 of *IPRA* that "ancestral domains and all resources found therein shall serve as the **material bases of [the IPs'] cultural integrity**," and **not generally for exploitative purposes**, and that ancestral domains including sustainable traditional resource rights are the IP's **private but community property** which **belongs to all generations** and therefore **cannot be sold, disposed** or **destroyed**.[89] He stressed that *IPRA* introduced a **new package of ownership rights distinct from those under civil law**. ***Subject to this limitation***, IP title entitles the **right** to **choose the uses** to which the land is put **and** to **enjoy its economic fruits**.[90]

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[85] *Id*.

[86] *Id*.

[87] *Id*.

[88] *Id*.

[89] Prof. Mario Victor "Marvic" F. Leonen, "The Indigenous Peoples' Rights Act: An Overview of its Contents," PHILJA Judicial Journal (2002).

[90] Supra note 83.

This **IP concept of ownership** is based on **customary law** and traced its origin to time immemorial **"native title."** Section 5 of *IPRA* strengthened these customary practices by emphasizing that ancestral lands and domains are the ICCs' and IPs' **"private but community property which belongs to all generations."** Section 56 of the *IPRA* even recognized the IPs' vested rights based on their existing property regime. With the passage of *IPRA*, formal recognition of the IPs' **"native title"** was attributed to their ancestral lands and domains. A Certificate of Ancestral Domain Title (CADT) may now be issued by the NCIP to ICCs and IPs.

v. Reconciling IP rights to preserve cultural integrity *and* ***claim or title to ancestral domains and lands with the State's jura regalia and police power***

The State's ***jura regalia*** is affirmed in Article XII, Section 2 of the ***Constitution***:

> All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.

This doctrine is a confirmation of the State's ownership of the lands of the public domain and the patrimony of the nation. By virtue of this doctrine, the State **acquired radical** or **underlying title** to all the lands in the country.[91] This **title**,

[91] *Id*.

however, is **burdened** by the **pre-existing legal rights of IPs** who had occupied and used the land prior to birth of the State. Hence, the **content** of the **State's underlying title** is **what is left** when **IP title is subtracted** from it.[92] **IP title** gives the **right to exclusive use and occupation** of the land for a variety of purposes **not confined** to traditional or distinctive uses.[93] It is a **beneficial interest** in the land — the **right to use it** and **profit from its economic development**. But **IP title** is subject to the **communal limitations** as discussed above.[94]

IP rights to preserve cultural integrity and claim or title to ancestral domains and land are **subject** to the **State's police power**. **Section 77** of PD 705, as amended is an **exercise of police power**, the **validity** of which is **not negated** by the fact that the objects thereof are **owned** by those charged with the offense. **Rather**, a police power measure is judged by the traditional **test** (1) "[t]he interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and (2) [t]he means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals."[95] Police power **trumps** objections on the basis of ownership.

vi. Iraya-Mangyans' practice of logging a dita tree and building a communal toilet as probably indicative of the IP right to preserve cultural integrity and to claim or title to ancestral domains or lands

Iraya-Mangyans in general are **settled communities**. But their culture as IPs was **drastically affected** when they were **evicted** from their **ancestral domains** and **lands**. They became **nomads who had no permanent domains, until they were again re-settled** pursuant to the recognition of their ancestral domains and lands. Thus:

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[92] *Id*.

[93] *Id*.

[94] *Id*.

[95] *Acosta v. Ochoa*, G.R. No. 211559, October 15, 2019.

Project: Communal Toilets

The Mangyan people **used to be the dominant dwellers** of the entire island including the lowlands, but ever since **more and more foreign settlers got in and started claiming (if not grabbing)** majority of the land area, **most of the Mangyans were driven** to the remote mountains and marshlands. Aside from **losing their ancestral lands** to the foreign settlers, the **island's natural resources** like the forests and rivers **got abused** causing the fast deterioration of vegetation and wildlife. These **adverse developments** throughout the history of the land **have affected the lifestyle** of the natural inhabitants — they **became scavengers** in their own land, they **became nomads** having **no permanent domain**, moving from place to place to survive the day.

Being **nomadic**, their **temporary settlements (haron) developed in them a culture of less desirable hygiene**. This common practice in their household have cause epidemic diseases and death. But **this hygiene problem was not limited to** those Mangyan communities who are **still nomadic** because even **those other communities who were blessed to be awarded with protected domains** under the provision of National Council for Indigenous People (NCIP) and the local government were **not able to withdraw themselves from the bad practice**.

[Drops of Faith Christian Missions has] seen the **importance of attending** to this perilous issue and so we **came up with a project to start building communal toilets in those Mangyan communities** which have secured dwelling permanency in their ancestral land.[96]

Taking account of petitioners' distinctive culture as IPs and their displacement from the ancestral domains and land, their **efforts to build communal toilets** came about most likely as part of the practice intended as a means for them to survive as an ICC as result of their displacement and thereafter re-settlement.[97]

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[96] Drops of Faith Christian Missions, at https://dfcmtribaimissions.wordpress.com/tag/mangyan-tribes/page/3/, (last accessed March 29, 2020).

[97] Kristine Askeland, Torill Bull, Maurice B. Mittelmark, Understanding how the poorest can thrive: A case study of the Mangyan women on Mindoro, Philippines (Master's Thesis, May 2010), at http://dspace.uib.no/bitstream/handle/1956/4277/69634922.pdf?sequence=1&isAllowed=y (last accessed on September 21, 2020).

But this activity did **not** arise solely because of the Mangyans' dispossession of their ancestral domains and lands, though as pointed out above this may have been *probably* the immediate cause for the need to erect communal toilets. It has always been the case that **communal structures including communal toilets have characterized the pre-colonization culture** of the Mangyans.[98] The **use of communal toilets** has always been a **cultural practice** because the **water source** is **communal** and it has **not** been **feasible** to build a toilet for every household.[99]

While the **established cultural practice** which continued from pre-contact and post-contact as a survival means is **communal building**, including those of **communal toilets**, the **logging of the *dita* tree**, pursuant to the **communal** purpose and the instructions of petitioners' elders and the assurances of a **non-governmental organization** and the **NCIP**, are *more likely than not* **necessarily connected** to this **pre- and post-colonial cultural practices** and an **integral part** of its **continuity to the present**. The reason for this is that since time immemorial, *probably* this **has been how the Mangyans**, including petitioners herein, **have been able to source the materials** for their communal building activities.

To further support their claim that they were **justified** in **logging the *dita* tree**, petitioners contend as well that even prior to the effectivity of the *IPRA* on March 30, 1998, the Iraya-Mangyans had **already applied for a Certificate of Ancestral Domain Claim (CADC)**.[100] As of March 31, 2018, the NCIP data show that CADC No. R04-CADC-126 dated

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[98] The Mangyans, Our Brothers, at http://www.newsflash.org/2004/02/tl/tl012695.htm (last accessed on September 21, 2020); Kapit-Bisig Laban sa Kahirapan-Comprehensive and Integrated Delivery of Social Services, at https://ncddp.dswd.gov.ph/site/feature_profile/237 (last accessed on September 21, 2020); Kristine Askeland, Torill Bull, Maurice B. Mittelmark, *supra*; The Iraya Mangyan Village in Puerto Galera, at http://www.mariaronabeltran.com/2019/01/the-iraya-mangyan-village-in-puerto.html, (last accessed on March 29, 2020).

[99] *Id*.

[100] *Supra* note 1.

June 5, 1998 was issued to the Iraya-Mangyan IP and is **pending conversion to a Certificate of Ancestral Domain Title (CADT)**.[101] Although the conversion of the CADC to a CADT is still pending, we take **judicial notice** that the **nearly perfected claim** covers the municipalities of Baco, San Teodoro, and Puerto Galera in Oriental Mindoro with a land area of 33,334 hectares.[102]

A CADC is the State's formal recognition of an IP/ICCs' claim to a particular traditional territory which the IP/ICC has **possessed and occupied, communally or individually, in accordance with its customs and traditions** since time immemorial.[103] The issuance of a CADC involves a painstaking process of submitting documents and testimonies attesting to the **possession or occupation of the area since time immemorial by such indigenous community** in the concept of owners.[104]

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[101] https://www.doe.gov.ph/sites/default/files/pdf/eicc/cadt-region04, (last accessed: January 22, 2020).

[102] Section 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, ***the official acts*** of legislative, ***executive*** and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions. *(Rule 129 of the Revised Rules of Court)*

[103] DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims; DENR AO No. 29-96, Rules and Regulations for the Implementation of Executive Order 263, Otherwise Known as the Community-Based Forest Management Strategy (CBFMS); Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan; Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan; DENR AO No. 25-92, National Integrated Protected Areas System (NIPAS) Implementing Rules and Regulations; NCIP AO No. 04-12, Revised Omnibus Rules on Delineation and Recognition of Ancestral Domains and Lands of 2012.

[104] See *e.g.*, DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain

The fact that a certificate of title or CADT has yet to be issued to the Iraya-Mangyan IPs does not diminish, much less, negate their **communal ownership** of the land in question. After all, a paper title is just proof of communal ownership not a source of ownership.[105] ***Lamsis v. Dong-E***[106] relevantly states:

> The application for issuance of a Certificate of Ancestral Land Title pending before the NCIP is akin to a registration proceeding. It also seeks an official recognition of one's claim to a particular land and is also *in rem*. **The titling of ancestral lands is for the purpose of "officially establishing" one's land as an ancestral land. Just like a registration proceeding, the titling of ancestral lands does not vest ownership upon the applicant but only recognizes ownership that has already vested in the applicant by virtue of his and his predecessor-in-interest's possession of the property since time immemorial.**[107]

Even without yet a paper title, the State has **already formally recognized** the rights of the Iraya-Mangyan IPs **approaching title** to use and enjoy their ancestral domains through their CADC.

The State has also affirmed that **holders of a CADC have substantial rights** and obligations, to wit:

A. Rights

1. The right to occupy, cultivate and utilize the land and all natural resources found therein, as well as to reside peacefully within the domain, subject to existing laws, rules and regulations applicable thereto;
2. The right to benefit and to share the profits from the allocation and utilization of natural resources within the domain;
3. The right to regulate in coordination with the Local Government Units concerned, the entry of migrant settlers, non-government organizations and other similar entities into the domain;

Claims; Palawan Council for Sustainable Development Resolution No. 38-A-93, Resolution Adopting the Guidelines for the Identification and Delineation of Ancestral Domain and Land Claims in Palawan.

[105] See *Lim v. Gamosa*, 774 Phil. 31 (2015).

[106] 648 Phil. 372, 393-394 (2010).

[107] Citations omitted.

4. The right to negotiate the terms and conditions for the exploitation of natural resources in the area for the purpose of ensuring the observance of ecological and environmental protection and conservation measures pursuant to national and customary laws, rules and regulations;
5. The right to actively and collectively participate in the formulation and implementation of government projects within the domain;
6. The right to lay claim on adjacent areas which may, after a more careful and thorough investigation, be proven to be in fact part of the ancestral domain;
7. The right to access and availment of technical, financial and other form of assistance provided for by the Department of Environment and Natural Resources and other government agencies;
8. The right to claim ownership of all improvements made by them at any time within the ancestral domain.

B. Responsibilities — The community claimants shall have the responsibility to:

1. Prepare a Management Plan for the domain in consonance with the provisions of Article VI hereof;
2. Establish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain;
3. Restore, preserve and maintain a balanced ecology in the ancestral domain by protecting flora, fauna, watershed areas, and other forest and mineral reserves;
4. Protect and conserve forest trees and other vegetation naturally growing on the land specially along rivers, streams and channels;
5. Preservation of natural features of the domain.[108]

A CADC **affirms practically the same rights** as those recognized in the *IPRA* as incidents of IP title. As **possessors of a CADC**, the Iraya-Mangyan IPs, including herein accused, have been **confirmed to have the right to the exclusive communal use and occupation of the ancestral domain** covering a designated territory within the municipality of San

[108] DENR AO No. 02-93, Rules and Regulations for the Identification, Delineation and Recognition of Ancestral Land and Domain Claims.

Teodoro for a variety of purposes, including limited non-traditional purposes and **the right to enjoy its economic fruits**.

There are however, as stated, **clear limitations** to these rights — the exclusive uses of the ancestral domain should be **consistent with the communal and ongoing nature of the IPs' attachment to the ancestral domain**, the **preservation of the IPs' cultural integrity**, and the **ability of future generations to benefit from it**. These limitations can be inferred from the IPs' responsibility above-mentioned to ***"[e]stablish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain,"*** together with *IPRA*'s indigenous concept of ownership that ***"ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity"*** and that ancestral domains are private but community property which belongs to all generations.

While **ownership** itself is **not** a defense to a prosecution for violation of Section 77, PD 705 as amended, as **police power invariably trumps ownership**, the subject **IP rights** are **not** themselves the same as **the ownership proscribed as a defense** in this type of offense. The IP rights are to preserve their cultural integrity, primordially a **social** and **cultural** and also a **collective** right.

On the other hand, the **claim** or **title** to ancestral domains and land is ***sui generis* ownership** that is curiously **identical** to the **purpose** for which Section 77 as a police power measure was legislated — *the protection and promotion of a healthy and clean ecology and environment through sustainable use of timber and other forest products*.

Thus, the **purpose** for requiring State authority before one may cut and collect timber **is claimed to have been satisfied** by the ***sui generis* ownership** which IPs possess. This **parallelism** all the more **supports** our conclusion debunking on **reasonable doubt** the claim that petitioners **intended** and **voluntarily** cut and collected the *dita* tree **without lawful authority**. Justice Caguioa expresses the same view which we quote:

. . . the **self-limiting and tight window within which the indigenous peoples may cut trees** from their own ancestral domain without prior permission is **narrow enough as to sidestep any need to reconcile rights granted by IPRA *vis-à-vis* forestry regulations**. This supports the **primary aspiration that animates the IPRA, that is to restore ICCs/IPs to their land and affirm their right to cultural integrity and customary ways of life, with socio-cultural and legal space** to unfold as they have done since time immemorial. . . .

I submit that perhaps, if not with this case, a **tightrope** must eventually be walked with respect to the **issues of environmental sustainability and indigenous peoples' rights, without having to weaken one to enable the other**.

For as affirmed by the IPRA, the **cultural identity of the indigenous peoples has long been inseparable from the environment** that surrounds it. There is, therefore, **no knowable benefit in an indigenous custom or cultural belief that truthfully permits plunder of the environment** that they hold synonymous with their collective identity. **No legally sound argument may be built to support the premise that we ought not affirm the freedom of these indigenous peoples because they might exercise such freedom to bulldoze their own rights.**

That the experience on the ground shows abuses from unscrupulous non-members of ICCs/IPs of ancestral domains does not merit that the very same indigenous communities that have been taken advantage of be made to pay the highest cost of relinquishing what little control that was restored to them by law.

Indeed, there is reasonable doubt as to the existence of petitioners' IP right to log the *dita* tree for the construction of a communal toilet for the Iraya-Mangyan ICC. It is engendered by the **more expansive definition of authority under the law**, the bundle of **petitioners' IP rights both under the Constitution and IPRA**, and a host of others like the ones mentioned by Justice Leonen in his *Opinion*, the sundry **administrative regulations** which seek to reconcile the regalian doctrine and the civilist concept of ownership with the indigenous peoples' ***sui generis*** ownership of ancestral domains and lands, the **international covenants** like the *United Nations Declaration on the Rights of Indigenous Peoples*, of which our country is

a signatory, and **Philippine** and **international jurisprudence** which identifies the forms and contents of IP rights. In addition, we have **the ever growing respect, recognition, protection, and preservation accorded by the State to the IPs, including their rights to cultural heritage and ancestral domains and lands**.

This finding of reasonable doubt **absolves not only petitioners but also accused Demetrio Masanglay *y* Aceveda** of criminal liability for the offense charged. Section 11 (a), Rule 122 of the Rules of Court ordains:

Section 11. *Effect of appeal by any of several accused. —*

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter;

Considering the afore-cited rule, a favorable judgment – as here – shall benefit accused Demetrio who did not appeal. For as stated, an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties.[109] Thus, although it is only petitioners who persisted with the present appeal, the Court may still pass upon the issue of whether their co-accused Demetrio should also be exonerated, especially since the evidence and arguments against and the conviction of petitioners, on the one hand, and accused Demetrio, on the other, are inextricably linked.[110]

So must it be.

Disposition

ACCORDINGLY, the petition is **GRANTED**. The Decision dated May 29, 2015 and Resolution dated April 11, 2016 of the Court of Appeals in CA-G.R. CR No. 33906 are **REVERSED** and **SET ASIDE**. Petitioners **DIOSDADO SAMA *y* HINUPAS, BANDY MASANGLAY *y* ACEVEDA and**

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[109] See *People v. Merced*, 827 Phil. 473, 492 (2018).

[110] See *Lim v. Court of Appeals*, 524 Phil. 692 (2006).

accused Demetrio Masanglay *y* Aceveda are **ACQUITTED on reasonable doubt** in Criminal Case No. CR-05-8066.

SO ORDERED.

Gesmundo, Carandang, Inting, Delos Santos, and *Rosario, JJ.*, concur.

Perlas-Bernabe, *Leonen, Caguioa,* and *Zalameda, JJ.*, see separate concurring opinions.

Gaerlan, J., joins the separate concurring opinion of *J. Zalameda.*

Peralta, C.J. and *Lopez, J.*, see dissenting opinions.

Hernando, J., joins the dissent of *C.J. Peralta.*

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.:*

I concur in the result. Petitioners Diosdado Sama *y* Hinupas and Bandy Masanglay *y* Aceveda (petitioners) should be acquitted for the prosecution's failure to prove beyond reasonable doubt their criminal liability under Section 77 of the Forestry Code, as amended (Section 77).[1]

The essential facts are as follows: petitioners, who are part of the Iraya-Mangyan tribe, are among the indigenous peoples (IPs) in Mindoro. On March 15, 2005, they were caught cutting a *dita* tree using an unregistered power chainsaw, and were consequently charged under Section 77. While petitioners admit that they had no license to cut the tree, they argue that their act was justified pursuant to their right to utilize the natural resources within their ancestral domain for a communal purpose — that is, to build a community toilet. They also aver that as IPs, they

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[1] See Revised Forestry Code of the Philippines, Presidential Decree No. 705, May 19, 1975, as amended by Executive Order No. 277, July 25, 1987, and renumbered pursuant to Section 7 of Republic Act No. (RA) 7161, October 10, 1991.

are allowed to cut trees within their ancestral domain as part of their right to cultural integrity pursuant to the Indigenous Peoples' Rights Act of 1997[2] (IPRA). The lower courts, however, convicted them based on a strict application of the penal provision, holding that a violation of Section 77 is considered *malum prohibitum*.

At the onset, emphasis must be made on the fact that this case only centers on the **criminal liability** of herein petitioners for cutting one tree within their ancestral domain for the undisputed purpose of building a community toilet. They claim that such acts were done for the benefit of their IP community, and therefore, amounts to an apparent **legitimate exercise** of their right to use natural resources within their ancestral domain. In the court *a quo*'s proceedings, the prosecution neither questioned the purpose for which the *dita* tree was to be used nor presented any evidence as regards the use of such tree for the benefit of non-IPs. This case, therefore, must be resolved on the basis of the peculiar circumstances attendant herein. **Elementary is the rule in criminal law that the accused is entitled to an acquittal when there is reasonable doubt**. To stress, the Court is called upon in this case to determine petitioners' criminal liability under Section 77 based on the specific facts established herein. Similar to Associate Justice Alfredo Benjamin S. Caguioa, I espouse a sentiment of judicial restraint in going over and beyond this framework of analysis, and in so doing, unnecessarily demarcate constitutional lines and borders that would gravely impact the rights of IPs in general relative to the application of environmental regulations affecting them.

In determining criminal liability, the elements of the crime must be proven to exist by the highest threshold of evidence

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[2] Entitled, "AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/ INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on October 29, 1997.

— that is, proof beyond reasonable doubt. In this regard, case law states that:

> Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. The prosecution's case must rise on its own merits, not merely on relative strength as against that of the defense. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.

Corollary to the foregoing, this Court has held that "the existence of criminal liability for which the accused is made answerable must be clear and certain. We have consistently held that penal statutes are construed strictly against the State and liberally in favor of the accused. **When there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused**."[3]

On its face, the first offense under Section 77[4] may be broken down into the following elements:

a. **Cutting**, gathering, collecting and removing:
   (i) timber or other forest products from any forest land; or
   (ii) **timber** from alienable or disposable public land or from private land; and
b. the said act/s is/are done **without any authority**.

Relevant to the first element under Section 77 is Section 2, Article XII of the 1987 Constitution, which provides:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or **timber**, wildlife, flora and fauna, and other **natural resources are owned by the State**. With the exception of agricultural lands, all other **natural resources shall not be alienated**. The exploration, development, and **utilization of natural resources shall be under the full control and supervision of the State**. x x x

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[3] *Ient v. Tullett Prebon (Philippines), Inc.*, 803 Phil. 163, 185-186 (2017); citation omitted.

[4] According to case law, Section 77 punishes two (2) separate offenses. See *Revaldo v. People*, 603 Phil. 332, 342 [2009].

x x x x

The Congress may, by law, **allow small-scale utilization of natural resources** by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. (Emphases and underscoring supplied)

As explicitly stated, all "natural resources are owned by the State."[5] While categories of lands (*i.e.*, lands of public domain and agricultural lands) were therein provided, there is no qualifier created for timber and other natural resources.[6] Moreover, while the provision allows the alienation of agricultural lands, it prohibits the alienation of natural resources. Accordingly, it is sufficiently apparent that Section 77 punishes the cutting of timber – a natural resource – regardless of the character of the land where the tree was once situated.

Consistent with the State's ownership of natural resources, Section 57 of the IPRA accords IPs "priority rights" in the utilization of natural resources. The fact that the IPRA does not bestow ownership of natural resources has been discussed in the congressional deliberations therefor:[7]

HON. DOMINGUEZ. Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, *we have decided to*

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[5] The declaration of State ownership and control over natural resources in the 1935 Constitution was reiterated in both the 1973 and 1987 Constitutions.

[6] See Professor Marvic M.V.F. Leonen (now Supreme Court Associate Justice), *The Indigenous Peoples' Rights Act: An Overview of Its Contents*, 4 [13] The PHILJA Judicial Journal 53-79, (2002): "Look at the provision in Section 2, Article XII of the Constitution: x x x **There is a qualifier to land, but no qualifier to timber**. It does not say timber planted on private land, or public or private timber, unlike in other systems in different parts of the world. In our jurisdiction, **timber is always public domain; it cannot be alienated as timber**. Of course, rights to timber can be alienated, but the timber itself cannot be alienated. And that is, the justification for the Forestry Code's allowance to the Department of Environment and Natural Resources [DENR] to grant a permit for tree-cutting. If it stands on private land, there is the special tree-cutting permit[.]" (pp. 63-64)

[7] See Justice Kapunan's opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 1064 (2000).

remove the provisions on natural resources because ***we all agree that belongs to the State***. Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras.

Based on the foregoing, the subject timber[8] or *dita*[9] tree in this case was owned by the State even if it stood within an ancestral domain.[10] Considering that petitioners admitted that they cut the *dita* tree found within the ancestral domain, there

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[8] In *Mustang Lumber, Inc. v. CA* (327 Phil. 214, 235 [1996]), the Court stated that while the Revised Forestry Code does not define timber, "[i]t is settled that in the absence of legislative intent to the contrary, words and phrases used in a statute should be given their plain, ordinary, and common usage meaning. And insofar as possession of *timber* without the required legal documents is concerned, Section 68 of P.D. No. 705, as amended, makes no distinction between raw or processed timber. Neither should we. *Ubi lex non distinguit nec nos distinguere debemus*."

[9] Merriam-Webster Dictionary defines "timber" as "growing trees or their wood" and "dita" as "a forest tree *(Alstoniascholaris)* of eastern Asia and the Philippines the bark of which was formerly used as an antiperiodic."

[10] See Justice Kapunan's opinion in *Cruz v. Secretary of Environment and Natural Resources, supra* note 7, at 1066-1070: "While as previously discussed, native title to land or private ownership by Filipinos of land by virtue of time immemorial possession in the concept of an owner was acknowledged and recognized as far back during the Spanish colonization of the Philippines, there was no similar favorable treatment as regards natural resources. The unique value of natural resources has been acknowledged by the State and is the underlying reason for its consistent assertion of ownership and control over said natural resources from the Spanish regime up to the present." "Having ruled that the **natural resources which may be found within the ancestral domains belong to the State**, the Court deems it necessary to clarify that the jurisdiction of the NCIP with respect to ancestral domains under Section 52 [i] of IPRA extends only to the lands, and not to the natural resources therein." See also Justice Panganiban's statement in *IPRA — Social Justice or Reverse Discrimination*, The PHILJA Judicial Journal 157-203 (2002) that "in all the Opinions rendered, there seems to be a general understanding that natural resources within ancestral domains were 'not bestowed' by IPRA on the indigenous people." p. 172.

is proof beyond reasonable doubt that the first element of Section 77 is present in this case.

On the contrary, however, it is doubtful that the second element of Section 77 obtains in this case. This is considering the undisputed contention that petitioners' act of cutting a singular *dita* tree was made pursuant to their rights as IPs.

To my mind, the intent behind Section 77 is the conservation of our natural resources consistent with the State's general policy to protect the environment. However, a review of the laws passed after the Forestry Code reveals that IPs have been granted a limited authority to utilize natural resources located within their ancestral domains as necessary for their subsistence. It is observed that unlike previous constitutions, the 1987 Constitution explicitly and repeatedly declares that the State "recognizes and promotes the rights of indigenous cultural communities."[11] In this regard, it has been stated that "[t]he 1987 Constitution's attitude towards IPs, **with its emphasis on preservation**, is a marked departure from regimes under the 1935 and 1973 Constitutions, which were typified by integration" (*i.e.*, attuning IPs to the mainstream) that **"inevitably tended to measures that eroded [their] identities."** This shift in the constitutional appreciation of IPs' rights "reorients the State toward **enabling [IPs] to maintain their identity**,"[12] which is, *inter alia*, characterized by the integral connection between their culture and the environment.

In this relation, it is apt to mention that Article 27 of the United Nations Convention on International Civil and Political

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[11] See Section 22, Article II (Declaration of Principles and State Policies) of the 1987 Constitution which provides that: "The State recognizes and promotes the *rights* of indigenous cultural communities within the framework of national unity and development." See also Section 17, Article XIV thereof, to wit: "The State shall recognize, respect, and protect the *rights of indigenous cultural communities* to preserve and develop their cultures, traditions, and institutions. It shall *consider* these rights in the formulation of national plans and policies."

[12] See *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019.

Rights (Article 27) — to which the Philippines is a signatory — tasks the State party to protect the rights of ethnic minorities "to enjoy their own culture." Interpreting this provision, the United Nations Human Rights Committee (UNHRC) issued General Comment No. 23,[13] declaring that "culture manifests itself in many forms, including a ***particular way of life associated with the use of land resources, especially in the case of* [*IPs*]**." Thus, the UNHRC stated that the State party's obligation under Article 27 includes protecting the IPs' **particular** "**way of life** which is **closely associated with** territory and [the] use of its **resources**."[14] It concludes that such protection is "directed towards ensuring the survival and continued development of [the IPs'] cultural, religious[,] and social identity." Hence, based on these legal sources, protecting IPs' rights necessitates due regard for the centrality of the IPs' use of natural resources to their cultural identity.

The IPRA, which was enacted under the auspices of the 1987 Constitution, concretized the State's recognition and promotion of all IPs' rights. The protection granted to them is based on the recognition of their way of life,[15] characterized by their holistic relationship with the natural environment. Accordingly, the IPRA acknowledges the IPs' right to *ancestral domains*, which is an all-embracing concept that pertains not only to "lands, inland waters, [and] coastal area" but also to the "*natural resources therein*."[16] Ancestral domains also include land which may no longer be exclusively occupied by them, but to which they "*traditionally* had *access for their subsistence*."[17] Section

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[13] UNHCR, CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, available at: https://www.refworld.org/docid/453883fc0.html (last accessed on August 26, 2020).

[14] Id. See also *J.G.A. Diergaardt (late Captain of the Rehoboth Baster Community), et al. v. Namibia*, Communication No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997 (2000).

[15] See *Ha Datu Tahawig v. Lapinid,* supra note 12. See also Section 4, Chapter III of RA 8371.

[16] See Section 3 (a) of the IPRA.

[17] Id.

5 of the IPRA states that ***"all resources found therein* shall serve as the material bases of their cultural integrity."** The same provision explains that the indigenous concept of ownership "covers *sustainable traditional resource rights*," which refers to their right to "sustainably use, manage, protect, and conserve" certain resources.[18] Section 7 (b) of the IPRA also provides for their right to *"manage and conserve natural resources"* and to "share the profits from allocation and *utilization of the natural resources found therein*."[19] Section 57 of the IPRA further grants IPs the *priority rights in the harvesting, extraction, development or exploitation of any natural resources* within their ancestral domains. **Taken together**, these provisions reveal a **legislative intent to authorize IPs to use the resources within their ancestral domain**, in line with the constitutional provision allowing small-scale utilization of natural resources.[20]

Worthy to note that aside from the IPRA, the State has enacted other statutes permitting IPs to utilize natural resources, ***including timber***, within their domains for their domestic needs and subsistence.[21] Of particular significance is the 2018 *Expanded National Integrated Protected Areas System Act* (ENIPAS),[22]

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[18] Section 3 (o) of the IPRA.

[19] Section 7 of the IPRA recognizes and protects IPs' rights to the ancestral domains including the right to develop lands and natural resources.

[20] See paragraph 3, Section 2, Article XII of the 1987 Constitution.

[21] For one, the law establishing the government of Benguet has allowed IPs there to use timber and firewood for domestic purposes, particularly for cooking food, warming their houses, constructing their houses, or fencing plots of cultivating grounds. (See Section 20 of the Establishment of a Civil Government for Benguet, Act No. 49, November 23, 1900.) In 2001, the *Northern Sierra Madre Natural Park (NSMNP) Act* was enacted mandating the non-restriction of the *IPs' use of the resources in the NSMNP for their "domestic needs or for their subsistence"* and disallowance of the *use of timber* only if for livelihood purposes. See Section 19, RA 9125, entitled, AN ACT ESTABLISHING THE NORTHERN SIERRA MADRE MOUNTAIN RANGE WITHIN THE PROVINCE OF ISABELA AS A PROTECTED AREA AND ITS PERIPHERAL AREAS AS BUFFER ZONES, PROVIDING FOR ITS MANAGEMENT AND FOR OTHER PURPOSES.

[22] RA 11038, June 22, 2018, amending RA 7586.

which prohibits the "cutting, removing, or collecting [of] *timber* within the protected area x x x without the necessary permit, authorization, certification of planted trees or exemption."[23] **In recognition of IPs' rights,**[24] **an exception is added to the permit requirement**, to wit: "when such acts are done *in accordance with the duly recognized practices of the IPs/ICCs for* ***subsistence purposes***."[25] While the application of ENIPAS does not fully square with this case, it, however, provides statutory semblance showing the **recognition of IPs' rights in a piece of environmental legislation**. In this relation, it may not be amiss to highlight that the ENIPAS constitutes a ***stricter*** environmental regulation than what is applicable in areas not protected under this statute (as in this case); nevertheless, by the language of the law itself, the ENIPAS still recognizes the foregoing practices of IPs/ICCs as an exception to the prohibition of "cutting, removing, or collecting [of] *timber* within the protected area x x x without the necessary permit, authorization, certification of planted trees or exemption."

When taken against the entire framework of IP rights protection, I submit that there is ample legal basis to argue that the second element of the offense under Section 77 (*i.e.*, "that the said act is done ***without any authority***") equally recognizes, as an exception, the legitimate exercise of IPs' rights pursuant to their own cultural and traditional beliefs.

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[23] See Section 20 of the ENIPAS, as amended.

[24] Section 29 of the ENIPAS reads:

"SEC. 29. *Construction and Interpretation*. — The provisions of this Act shall be construed liberally in favor of the protection and rehabilitation of the protected area and the conservation and restoration of its biological diversity, x x x *Provided*, That nothing in this Act shall be construed as a x x x **derogation of ancestral domain rights under the Indigenous Peoples' Rights Act of 1997**."

[25] Section 20 (c) of the ENIPAS reads thus:

"(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; **except**, however, **when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes**." (Emphases and underscoring supplied)

Further, it must be noted that the original iteration of Section 77 (then Section 68 of Presidential Decree No. 705 [1975]) was passed under the 1973 Constitution and specifically described "authority" as being *"under a license agreement, lease, license or permit."*[26] However, soon after the enactment of the 1987 Constitution or in July 1987, then President Corazon Aquino issued Executive Order No. 277 (EO 277) amending Section 77, which, among others, removed the above-mentioned descriptor, hence, leaving the phrase *"without any authority,"* generally-worded. To my mind, **the amendment of Section 77 may be read in light of the new legal regime which gives significant emphasis on the State's protection of our IPs' rights, which includes the preservation of their cultural identity. Given that there was no explanation in EO 277 as to the "authority" required**, it may then be reasonably argued that the amendment accommodates the legitimate exercise of IPs' rights within their ancestral domains.

In this relation, the esteemed Chief Justice Diosdado M. Peralta has argued that the "authority" required under Section 77 must be understood as still requiring licenses issued by the DENR because of the provision's heading to wit: *"Cutting, Gathering and/or collecting Timber or Other Forest Products without License."* A rule, however, in statutory construction, is that headings may be consulted in aid of interpretation, but "inferences drawn from [them] are entitled to very little weight."[27]

Further, it must be borne in mind that Section 77 punishes two separate offenses. In *Revaldo v. People*:[28]

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[26] The relevant portion of the provision states:

"SEC. 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License*. — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, **without any authority** under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code." (Emphasis and underscoring supplied)

[27] *Kare v. Platon*, 56 Phil. 248, 250 (1931), citing Black's Interpretation of Laws.

[28] 603 Phil. 332 (2009).

There are two distinct and separate offenses punished under Section 68 of the Forestry Code, to wit:

(1) Cutting, gathering, collecting[,] and removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and

(2) Possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[29]

Based on the provision itself, the first offense of cutting, gathering, collecting, removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land is **qualified by the general phrase "without any authority,"** whereas the second offense of possessing timber or other forest products is qualified by the more specific phrase **"without the legal documents as required under existing forest laws and regulations"**:

Sec. 68. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products without License*. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land **without any authority**, or possess timber or other forest products **without the legal documents as required under existing forest laws and regulations**, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: *Provided*, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation. (Emphases supplied)

Hence, should the first offense contemplate the requirement of a documentary license, then Congress should not have qualified it with the general phrase "without any authority," and instead, just applied the specific phrase "without the legal documents as required under existing forest laws and regulations" as in

[29] Id. at 342.

the second offense. The Congress' deliberate choice of words therefore reasonably supports the theory above-posited to allow for other exceptions to the first offense outside of the license requirement. At the very least, this creates a looming spectre of doubt in the application of penal law, which, as per our prevailing doctrines in criminal law, must be construed in favor of the accused, as petitioners in this case. To repeat the bedrock dictum, **when there is doubt on the interpretation of criminal laws, all must be resolved in favor of the accused**.

In this case, one (1) *dita* tree located within the ancestral domain was cut down by petitioners. The fact that they intended to use the felled tree to build a shared toilet for their indigenous community is undisputed. As it is equally established that petitioners did so not for any malevolent purpose but merely for their subsistence in line with their tribe's cultural traditions and beliefs, in my view, they should not be held criminally liable for violation of Section 77 of the Forestry Code for the reasons herein explained. As such, I agree with the *ponencia* that they should be acquitted.

SEPARATE CONCURRING OPINION

"Such arrogance to say that you own the land, when you are owned by it! How can you own that which outlives you? Only the people own the land because only the people live forever. To claim a place is the birthright of everyone. Even the lowly animals have their own place . . . how much more when we talk of human beings?"

- *Macli-ing Dulag, Pangat, Butbut Tribe, Bugnay, Kalinga*[1]

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[1] *See* Bantayog ng mga Bayani, *DULAG, Macli-ing*, October 15, 2015, <http://www.bantayog.org/dulag-macli-ing/> (last accessed on January 5, 2021). *See also* Martial Law Museum, *The Heroes Who Fought Martial Law: Macli-ing Dulag*, <https://martiallawmuseum.ph/magaral/martial-law-heroes-macliing-dulag/> (last accessed on January 5, 2021).

LEONEN, *J.*:

I concur that petitioners should be acquitted of the crime charged. I contribute to the discussion of the erudite *ponente*, Associate Justice Amy C. Lazaro-Javier, a disquisition on the pre-colonial experience and historical backdrop of the Filipino tribal groups' rights over their ancestral lands and domains, including the resources found there.

Petitioners are Iraya-Mangyans who reside in Barangay Baras, Baco, Oriental Mindoro.[2] They were indicted for violating Section 77 of Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, after they cut down a *dita* tree without a license or permit issued by the proper authority.[3] Section 77 of Presidential Decree No. 705 states:

> SECTION 77. Cutting, Gathering and/or Collecting Timber or Other Forest Products without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.
>
> The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

In praying for their acquittal, petitioners invoke their Indigenous People (IP) right to harvest *dita* tree logs, which

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[2] *Ponencia*, p. 9.

[3] Id. at 3-4.

allegedly constitute a part of their right to cultural integrity, ancestral domain, and ancestral lands. They insist that the felled *dita* tree was planted in their ancestral domain, over which the Iraya-Mangyans' exercise communal dominion.[4]

Settled is the rule that "[o]nly questions of law may be raised in a petition for review on certiorari."[5] Further, "[t]his Court is not a trier of facts."[6] It accords great weight and respect to the trial court's findings of fact, especially when affirmed by the Court of Appeals.[7]

However, this rule is not without exception. In *Medina v. Asistio, Jr.*:[8]

> (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 petitioners' 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.[9] (Citations omitted, emphasis supplied)

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[4] Id. at 9.

[5] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

[6] Id.

[7] *People v. Quintos*, 746 Phil. 809, 820 (2014) [Per J. Leonen, Second Division].

[8] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[9] Id. at 232.

Furthermore, it has been held that this Court may reevaluate the lower court's factual findings "when certain material facts and circumstances had been overlooked by the trial court which, if taken into account, would alter the result of the case in that they would introduce an element of reasonable doubt which would entitle the accused to acquittal."[10]

Daayata v. People[11] explained the degree of proof necessary to sustain a conviction in criminal actions:

> Conviction in criminal actions demands proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence states:
>
> > Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.
>
> While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience[.][12]

In *Pit-og v. People*,[13] the petitioner was charged of theft after she took sugarcane and banana plants allegedly planted on the private complainant's land. The case involved a communal land called *tayan* owned by the tomayan group. A portion of the *tayan* was sold to private complainant Edward Pasiteng (Pasiteng), who planted sugarcane and banana plants there.

Pasiteng's lot was adjacent to the area cultivated by the petitioner, where she likewise planted banana plants and

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[10] *Pit-og v. People*, 268 Phil. 413, 420 (1990) [Per C.J. Fernan, Third Division].

[11] 807 Phil. 102 (2017) [Per J. Leonen, Second Division].

[12] Id. at 117-118.

[13] 268 Phil. 413 (1990) [Per C.J. Fernan, Third Division].

sugarcane. The petitioner was then convicted by the lower courts and the Court of Appeals. Yet, when the case reached this Court, the petitioner was acquitted based on reasonable doubt. This Court noted that "the areas cultivated by [Pasiteng] and Erkey were adjacent and so close to each other that the possibility of confusion as to who planted which plants is not remote."[14]

Further, this Court decreed that the prosecution's failure to definitively delineate the exact location where the petitioner harvested the plants equated to its failure to identify the real owner of the stolen items, thus:

> Hence, the definitive identification of the area allegedly possessed and planted to sugarcane and bananas by Edward Pasiteng is imperative. There is on record a survey plan of the 512 square-meter area claimed by Edward but there are no indications therein of the exact area involved in this case. This omission of the prosecution to definitively delineate the exact location of the place where Erkey allegedly harvested Edward's plants has punctured what appeared to be its neat presentation of the case. Proof on the matter, however, is important for it means the identification of the rightful owner of the stolen properties. *It should be emphasized that to prove the crime of theft, it is necessary and indispensable to clearly identify the person who, as a result of a criminal act, without his knowledge and consent, was wrongfully deprived of a thing belonging to him.*[15] (Citation omitted, emphasis supplied)

As in *Pit-og*, a perusal of the records in this case reveals that circumstances had been overlooked by the lower courts, which if considered, casts reasonable doubt on petitioners' guilt.

In rendering a judgment of conviction, the Regional Trial Court primarily relied on the testimony of the prosecution's lone witness, Police Officer 3 Villamor Rance (PO3 Rance). According to him, he and his team were directed to conduct a surveillance operation against illegal loggers. While patrolling the mountainous area of Barangay Calangatan, they heard a

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[14] Id. at 422.

[15] Id. at 422-423.

chainsaw and saw a tree slowly falling down.[16] Upon hearing this, "they immediately crossed the river and climbed the hilly portion where the cutting was being done[.]"[17] He admitted that he did not witness petitioners cut the tree, and that he only saw them holding a chainsaw, thus:

Q Mr. Witness, if you remember during the previous hearing, you stated that at the time that you arrived at the (discontinued). Mr. Witness during the previous hearing, you stated that at that time that you arrived at the alleged scene of the crime, you already saw the cut tree, is that correct?
A Yes Ma'am.

Q As such the tree was already cut at the time that you arrived, is that correct Mr. Witness?
A Yes ma'am.

Q How could you then say that one of the accused was the one operating the chainsaw when at the time that you arrived, the tree has already been fell?
A **Before I arrived at the alleged crime scene some of my companions already arrived ahead of me, ma'am.**

Q As such Mr. Witness, you cannot be testifying on the identity of the person who actually operated the said chainsaw, is that correct?
A **When I arrived he was the person holding the chainsaw ma'am.**

Q Holding the chainsaw Mr. witness but not actually using the chainsaw to cut the tree, is that correct?
A He was just holding it ma'am[.][18] (Emphasis in the original)

PO3 Rance's testimony, that they did not personally witness petitioners cut the tree, casts reasonable doubt on petitioners' guilt. That he saw petitioners holding a chainsaw without them using it cannot suffice to hold them liable for the act for which they are being indicted for.

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[16] *Ponencia*, p. 3.

[17] *Rollo*, p. 18, Petition citing *TSN* dated May 4, 2020.

[18] Id. at 18-19.

Likewise, PO3 Rance's admission that his team's distance from the scene of the crime was approximately 50 meters further, reinforces the conclusion that they did not personally see petitioners commit the crime they are being charged with.[19]

The Court of Appeals decreed that petitioners failed to prove ownership of the land where the felled *dita* tree was found. This failure equates to their inability to demonstrate their right to use and enjoy the land in accordance with Republic Act No. 8371.[20]

However, petitioners insist that they own the land and have occupied it since time immemorial. Their ownership is evidenced by Certificate of Ancestral Domain Claim (CADC) No. R04-CADC-126, issued by the Department of Environment and Natural Resources (DENR).[21]

The *ponencia* took judicial notice of the fact that CADC No. R04-CADC-126 "covers the municipalities of Baco, San Teodoro and Puerto Galera in Oriental Mindoro with a land area of 33,334 hectares." It was issued to the Iraya-Mangyan tribe on June 5, 1998. As of March 31, 2018, CADC No. R04-CADC-126 is pending conversion to a Certificate of Ancestral Domain Title (CADT).[22]

The CADC's existence casts reasonable doubt on who the real owner of the subject area is, along with the resources found there. In the absence of proof beyond reasonable doubt, petitioners' acquittal becomes imperative. As ruled in *People v. Ganguso*:[23]

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable

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[19] Id. at 18.

[20] Id. at 85-86.

[21] *Rollo*, pp. 162-163. Reply.

[22] *Ponencia*, p. 40 *citing* <https://www.doe.gov.ph/sites/default/files/pdf/eicc/cadt-region04.pdf>.

[23] 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].

doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[24] (Citations omitted)

I share the observation of Associate Justice Estela M. Perlas-Bernabe that laws passed after the Revised Forestry Code cast reasonable doubt as to the criminal liability of the accused.[25]

Presidential Decree No. 705 was passed in 1975. Its declared policy includes the "protection, development and rehabilitation of forest lands. . . to ensure their continuity in productive condition."[26] At the time the law was enacted, the 1973 Constitution devoted one (1) provision concerning national cultural minorities.[27] Article XV, Section 11 provides:

SECTION 11. The State shall consider the customs, traditions, beliefs, and interests of national cultural communities in the formulation and implementation of state policies.

Upon the ratification of the 1987 Constitution, the State's attitude towards indigenous people shifted from integration to maintaining and preserving the indigenous people's identity. "[I]t commits to not only recognize, but also *promote*, 'the rights

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[24] Id. at 325.

[25] *See* J. Perlas-Bernabe Separate Concurring Opinion, pp. 4-7.

[26] Pres. Decree No. 705 (1975), sec. 2(d).

[27] *See Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> [Per J. Leonen, Third Division].

of indigenous cultural communities.'"[28] In addition, the 1987 Constitution affirms to "protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."[29]

Taking this shift into account, subsequent laws incorporated the concept of ancestral land and recognized the rights of indigenous peoples.[30]

The Comprehensive Agrarian Reform Law of 1988 provides:

> SECTION 9. *Ancestral Lands*. — For purposes of this Act, ancestral lands of each indigenous cultural community shall include, but not be limited to, lands in the actual, continuous and open possession and occupation of the community and its members: Provided, that the Torrens System shall be respected.
>
> The right of these communities to their ancestral lands shall be protected to ensure their economic, social and cultural well-being. In line with the principles of self-determination and autonomy, the systems of land ownership, land use, and the modes of settling land disputes of all these communities must be recognized and respected.

Similarly, the National Integrated Protected Areas System Act of 1992 states:

> SECTION 13. *Ancestral Lands and Rights over Them*. — Ancestral lands and customary rights and interest arising therefrom shall be accorded due recognition. The DENR shall prescribe rules and regulations to govern ancestral lands within protected areas: Provided, That the DENR shall have no power to evict indigenous communities from their present occupancy nor resettle them to another area without their consent: Provided, however, that all rules and regulations, whether adversely affecting said communities or not, shall be subjected to

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[28] *Ha Datu Tawahig v. Lapinid*, G.R. No. 221139, March 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65145> [Per J. Leonen, Third Division].

[29] CONST. art. XII, sec. 5.

[30] *See* Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 161 (1998).

notice and hearing to be participated in by members of concerned indigenous community.

As mentioned in the Philippine Mining Act of 1995:

SECTION 16. Opening of Ancestral Lands for Mining Operations. — No ancestral land shall be opened for mining operations without the prior consent of the indigenous cultural community concerned.

Further, the Wildlife Resources Conservation and Protection Act provides:

SECTION 27. Illegal Acts. — Unless otherwise allowed in accordance with this Act, it shall be unlawful for any person to willfully and knowingly exploit wildlife resources and their habitats, or undertake the following acts:

(a) killing and destroying wildlife species, except in the following instances:

(i) when it is done as part of the religious rituals of established tribal groups or indigenous cultural communities[.]

And lastly, as stated in the Expanded National Integrated Protected Areas System Act of 2018 or Republic Act No. 11038:

SECTION 18. Section 20 of Republic Act No. 7586 is hereby amended to read as follows:

SEC. 20. *Prohibited Acts. — Except as may be allowed by the nature of their categories and pursuant to rules and regulations governing the same, the following acts are prohibited within protected areas*:

. . . .

(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; except, however, when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes[.]

On this note, Chief Justice Diosdado M. Peralta (Chief Justice Peralta) is of the view that no law relieves the Indigenous Cultural

Communities/Indigenous Peoples (ICC/IPs) from the obligation of obtaining the necessary cutting permit. He opines that while the State recognizes their cultural practices, indigenous peoples are not exempt from the country's regulatory policies on forests and natural resources. Further, he continues that the DENR and National Commission on Indigenous Peoples (NCIP) have issued Joint Administrative Order No. 2008-01 (DENR-NCIP JAO No. 2008-01) effectively harmonizing the provisions of Presidential Decree No. 705 and the Indigenous Peoples' Rights Act of 1997 (IPRA).[31]

I regret that I am unable to join Chief Justice Peralta's sentiment.

DENR-NCIP JAO No. 2008-01 provides for the guidelines for the recognition and registration of ICC/IPs' Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP). It further states that the forest resource utilization permit shall only be issued to ICCs/IPs with registered STIFRMSP.[32]

In criminal cases, the burden of proving the accused's guilt lies with the prosecution. It is charged with the duty of proving the elements constituting the crime charged. "The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense."[33]

In this case, petitioners' lack of authority to cut and utilize the tree is a negative allegation and constitutes an element of the crime charged. As in cases involving illegal possession of firearms, petitioners' lack of authority may be established by a testimony or certificate from the administrative agencies tasked with issuing this permit.[34] Unfortunately, the prosecution offered

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[31] *See* C.J. Peralta Separate Opinion, pp. 16-23.

[32] DENR-NCIP JAO NO. 2008-01, sec. 10 (10.1).

[33] *People v. Asis*, 439 Phil. 707, 728 (2002) [Per J. Panganiban, En Banc].

[34] *People v. Velasco*, G.R. No. 231787, August 19, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65645> [Per J. Caguioa, Second Division].

no certification from the DENR to prove that no permit was issued in favor of petitioners.

However, it must be clarified that the requirement of negative certification must apply only to situations where indigenous peoples are being accused of cutting trees within their ancestral domain, as in this case. This is because the indigenous peoples own the land covered by their ancestral domain, and the resources found there.

In addition, it must be emphasized that under the present legal framework, the State commits to recognize and protect the rights of indigenous cultural communities to their ancestral lands. In this regard, recent criminal and environmental legislations, such as The Expanded National Integrated Protected Areas System Act of 2018, have acknowledged the exercise by the indigenous peoples of their cultural practices and traditions to be an exception from the permit requirement.

Further, the continuing inclination towards considering these cultural practices as an exception casts reasonable doubt on whether or not petitioners should be held guilty under Presidential Decree No. 705. The preferential application of these later laws is not only in accord with the *pro reo* principle, but also with the concept of social justice.

The *ponencia* sustained petitioners' argument and decreed that Iraya-Mangyans have a right, as indigenous peoples, to harvest a *dita* tree for the communal use of their group. This right constitutes a manifestation of petitioners' right to preserve their cultural integrity[35] and an economic manifestation of their right to their ancestral domain and ancestral land.[36]

I agree with the *ponencia*.

The Iraya-Mangyans are indigenous peoples publicly known to be residing in Mindoro Island. Specifically, the Iraya-Mangyans occupy certain municipalities in Occidental Mindoro

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[35] *Ponencia*, p. 38.

[36] Id. at 41.

such as: (1) Abra de Ilog; (2) Paluan; (3) Mamburao; (4) and Sta. Cruz.[37] They can also be found in Oriental Mindoro, particularly in the municipalities of Puerto Galera, San Teodoro, and Baco.[38]

Although Iraya is a term which denotes people from the upland or upstream, they originally lived in the lowlands or the town proper known as the *poblacion* or *lumang bayan*. They were, however, forced to flee to the uplands when armed men invaded their area.[39]

Like all other indigenous peoples, Iraya-Mangyans have always had a unique relationship with nature, specifically their land and its resources. This relationship comes from a belief of a higher being that has bestowed upon them the land and its resources, which must be respected, so as not to incur its wrath. This belief has then ingrained a sense of respect for the land and resources within each Filipino tribal group member.[40]

To them, nature is a space where the natural and supernatural meet. They conform to the view that nature is guarded by spirits. For this reason, Iraya-Mangyans utilize natural resources in accordance with the spirits' wishes.[41]

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[37] Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains*, 47 ATENEO L. J. 624, 626 (2002).

[38] *Ponencia*, p. 9.

[39] Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains*, 47 ATENEO L. J. 624, 627 (2002).

[40] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose land, Which Lands*, 42 ATENEO L. J. 159, 203 (1997). Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains* 47 ATENEO L. J. 624, 632-633 (2002).

[41] Portia M. Panegro and Francia C. Bulatao, *Claims and Counterclaims in the Mt. Halcon and Mt. Calavite Ranges: The Iraya Peoples' Assertion of Rights to Their Ancestral Domains* 47 ATENEO L. J. 624, 632-633 (2002).

To the Iraya-Mangyans, nature is a source of their sustenance and economic needs. The forest and water not only provide for their subsistence, but likewise supply their timber needs. Accordingly, they treat nature with utter respect and work for its preservation.[42]

Moreover, Iraya-Mangyans recognize that they must utilize the resources in a manner as not to deplete it. They observe certain traditional restrictions to ensure that the resources in their lands are not exhausted to the point of extinction. For instance, they refrain from cutting bamboo shoots and certain native grasses, as they are used for weaving. In cutting down trees, Iraya-Mangyans recognize that not all logs must be cut. Some species must be preserved as a means to control erosion.[43]

Iraya-Mangyans are generally engaged in swidden agriculture or shifting cultivation.[44] As such, they possess intricate knowledge of the tropical ecosystem. They employ a methodological procedure which yields maximum benefits without destroying the environment from which they derive their sustenance.[45]

In choosing their fields, they consider the floral composition of the site to determine soil properties. They avoid the headwaters of streams to protect the water source. In the *kaingin*, a fireline is made so that the fire will not spread. Instead of starting from the lower portion, the burning is started from the top. Then, the lower portion is burned. In such case, the fire could not spread upward, preventing the other areas from getting burned. Before, there was no necessity to make a fireline in the kaingin because of the abundance of trees. Now that the trees are getting depleted, the elders encouraged the community to use a fireline to protect the forest.

Big trees are covered with *saha ng saging* (banana trunks) so that heat will not destroy them if the same is within the *Kaingin* area. They also do not use explosives and high-powered inflammable

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[42] Id. at 633-634.

[43] Id. at 634.

[44] Id. at 629.

[45] Id. at 635.

substances. During the early times, they use stones and/or bamboos rubbed against each other to create fire. Lately, they resorted to the use of matches.[46]

The intricate knowledge of the Iraya-Mangyans in terms of the tropical ecosystem indicates the existence of practices and traditions which date back to the pre-colonial period. These practices and traditions serve as a material basis of their cultural integrity. In this regard, the IPRA takes into account the ICCs/IPs cultural well-being, among others, by recognizing the following rights: (1) the applicability of their customary laws relating to property rights or relations; (2) the significance of their culture, traditions and institution on formulating national laws and policies; and (3) the assurance that ICCs/IPs benefit equally with respect to opportunities which the laws and education, health, and other services beneficial to ICCs/IPs.[47]

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[46] Id.

[47] Republic Act No. 8371 (1997), sec. 2 provides:

SECTION 2. *Declaration of State Policies*. — The State shall recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) hereunder enumerated within the framework of the Constitution:

a) The State shall recognize and promote the rights of ICCs/IPs within the framework of national unity and development;

b) The State shall protect the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and cultural well being and shall recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain;

c) The State shall recognize, respect and protect the rights of ICCs/IPs to preserve and develop their cultures, traditions and institutions. It shall consider these rights in the formulation of national laws and policies;

d) The State shall guarantee that members of the ICCs/IPs regardless of sex, shall equally enjoy the full measure of human rights and freedoms without distinction or discrimination;

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; and

f) The State recognizes its obligations to respond to the strong expression of the ICCs/IPs for cultural integrity by assuring maximum ICC/IP

By these, the State guarantees that these culture and traditions are recognized, respected, and protected.[48]

The complexity of the legal backdrop of indigenous land rights can be attributed to the colonial experience of indigenous populations.[49] Prior to colonization, the sense of community was integral in the concept of ownership and property.

Since time immemorial, Filipino tribal groups have occupied and cultivated countless hectares of Philippine soil. They have adopted and practiced their own method of recognizing and acknowledging property rights based upon "kinship, communal affiliation, and local custom[.]"[50]

By the time the Spaniards reached our shores, these tribal groups have already developed their own sets of customs, traditions, and laws. These customs and traditions included the practice that everyone within the group should participate in the communal ownership over their land. This denotes a communal ownership grounded upon historical patterns of usage.[51]

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participation in the direction of education, health, as well as other services of ICCs/IPs, in order to render such services more responsive to the needs and desires of these communities.
Towards these ends, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights, taking into consideration their customs, traditions, values, beliefs, interests and institutions, and to adopt and implement measures to protect their rights to their ancestral domains.

[48] Republic Act No. 8371 (1997), sec. 29.
SECTION 29. Protection of Indigenous Culture, Traditions and Institutions. — The State shall respect, recognize and protect the right of ICCs/IPs to preserve and protect their culture, traditions and institutions. It shall consider these rights in the formulation and application of national plans and policies.

[49] *See* June Prill-Brett, *Indigenous Land Rights and Legal Pluralism among Philippine Highlanders*, 28 LAW AND SOCIETY IN SOUTHEAST ASIA 687, 691-692 (1994).

[50] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

[51] Id.

"Ownership" to the indigenous peoples of the Philippines has been described as the "tribal right to use the land or to territorial control." Ownership in this sense is equivalent to work. Ceasing to work means losing one's claim to ownership. In this paradigm, individuals are considered as mere "secondary owners" or "stewards of the land." Only beings of the spirit world may be the "true and primary or reciprocal owners of the land." On the other hand, "property" refers to things which require the application of labor or those "produced from labor."[52]

Indigenous peoples view their lands as communal, which means that it can be used by anybody who is a recognized member of the group. It is regarded as "a collective right to freely use the particular territory." Indigenous peoples also view land in the "concept of 'trusteeship.'" They believed that it is "not only the present generation, but also the future ones, which possess the right to the land."[53]

Unfortunately, certain government policies threaten the Filipino indigenous peoples' way of life. There are those who are denied the resources found within the very land they have occupied and cultivated for many years. As a result, the economic base upon which their survival rests is put at risk.[54]

I concur in the result. Petitioners should be acquitted.

I

For almost 21,500 years prior to Ferdinand Magellan's arrival in 1521, the Philippines had already been inhabited by different tribal groups.[55] These groups have "developed a wide array of legal norms, leadership structures . . . dispute settlement

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[52] Marvic M.V.F Leonen, *Law at Its Margins: Questions of Identity, Rights of Indigenous Peoples, Ancestral Domains and the Diffusion of Law*, 83 PHIL. L. J. 787, 807 (2009).

[53] Id.

[54] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 202 (1997).

[55] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

processes[,]"[56] and property norms.[57] These matters reflect environmental, cultural, and historical factors which were unique to the pre-conquest natives of the Philippine archipelago.[58]

These indigenous property concepts were present throughout the Philippine archipelago, and was concerned with generalized patterns of territorial behavior relating to ownership of land.[59]

There was, however, a dearth of literature pertaining to land ownership during the pre-conquest era. This notwithstanding, it had been a widespread custom that any person who acquires for himself and his close kin long term rights over a land, maintains such right so long as he continues to use the land. This practice made sure that the land would not remain indefinitely idle, since non-use of the land would mean forfeiture of one's right over it.[60]

The arrival of the Spaniards, and the subsequent subjugation of the different groups under its authority, paved the way for a new rule concerning land ownership over the Philippine archipelago.

Through discovery and conquest, Philippines passed to Spain. As a result, all lands of the Philippine archipelago came under the dominion of the Spanish Crown.[61]

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[56] Owen James Lynch, Jr., *The Philippine Indigenous Law Collection: An Introduction and Preliminary Bibliography*, 58 PHIL. L. J. 457, 459 (1983).

[57] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 272 (1982).

[58] Owen James Lynch, Jr., *The Philippine Indigenous Law Collection: An Introduction and Preliminary Bibliography*, 58 Phil. L.J. 457, 459 (1983).

[59] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 Phil. L.J. 268, 272-273 (1982).

[60] Id.

[61] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 953-954 (2000) [Per Curiam, En Banc].

Upon their arrival in the Philippines, the Spaniards discovered that Filipinos living in settlements were scattered along water routes and riverbanks. Accordingly, they implemented a process called *reduccion*, wherein Spanish missionaries were tasked to establish *pueblos*. Spaniards used the policy of *reduccion* to introduce and impose the Hispanic culture and civilization upon the Filipinos.[62]

The establishment of *pueblos* meant that the old barangays were divested of their lands. These lands were declared "crown lands or *realengas*, belonging to the Spanish king."[63] By this reason, "the natives were stripped of their ancestral rights to land."[64]

The Spaniards justified their sovereign claims based on discovery[65] and through the Law of the Indies, they introduced the concept of the Regalian Doctrine or *jura regalia*.[66] It constituted as the Spaniard's elaborated legal framework through which they can administer the Philippines from Madrid,[67] thus:

> The capacity of the State to own or acquire property is the state's power of *dominium*. This was the foundation for the early Spanish decrees embracing the feudal theory of *jura regalia*. The "Regalian Doctrine" or *jura regalia* is a Western legal concept that *was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal Cedulas*. The Laws of the Indies, *i.e.*, more specifically, *Law 14, Title 12, Book 4 of the Novisima Recopilacion de Leyes de las Indias*, set the policy of the Spanish Crown with respect to the Philippine Islands in the following manner:

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[62] Id. at 954.

[63] Id.

[64] Id.

[65] Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 286 (1987).

[66] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 934 (2000) [Per Curiam, En Banc].

[67] Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 286 (1987).

"We, having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.

We therefore order and command that all viceroys and presidents of pretorial courts designate at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will."[68] (Citations omitted, emphasis in the original)

Having exclusive dominion over the lands in the Philippines, the Spanish government began issuing royal grants and concessions which effectively distributed land rights to the Spaniards and loyal Spanish subjects. This notwithstanding, the *Law of the Indies*, and the subsequent laws enacted by the Spanish government, made it clear that the distribution of land rights and interests should not impair the rights and interests of the natives in their holdings.[69]

The Spanish Government's intention to guarantee the rights of the natives over their lands was reiterated and further clarified

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[68] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 932, 934-935 (2000) [Per Curiam, En Banc].

[69] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 274 (1982).

in the subsequent Royal Decree of October 15, 1754, which stated that the native's "justified long and continuous possession" qualified them for title to their cultivated land. The Royal Decree considered as valid title the native's ancient possession of their land, notwithstanding the possessor's failure to produce title deeds over the land.[70]

The Royal Cedula Circular of March 3, 1798 further expounded on this matter and proclaimed that "the will of the 'Crown' as expressed in various, instructions, royal edicts, orders and decrees, that the distribution of land to conquistadores' discoverers, and settlers should never prejudice the natives and their land-holdings."[71]

Despite the apparent deference of the Spanish Government to the native's rights over their lands, subsequent laws, however, triggered their legal disenfranchisement.[72]

On June 25, 1880, a Royal Decree was enacted stating that "all persons in possession of real property were to be considered owners provided they, had in good faith occupied and possessed their claimed land for at least [10] years."[73]

The Royal Decree of 1880 was followed by the Spanish Mortgage Law which had for its purpose "the systematic registration of land titles and deeds as well as for possessory claims." It was adopted as a means of registering and subjecting to taxation the lands held pursuant to the Royal Decree of 1880. The law provided that "'owners who lack recorded title of ownership' could have their interests registered during a possessory information proceeding[.]" However, the title was

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[70] Id. at 274-275.

[71] Id. at 275.

[72] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

[73] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982). *See also* John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

a mere record of possession which can later be converted into a record of ownership after 20 years from its date of issue.[74]

By 1894, the unresolved applications for official documentary recognition of ownership reached 200,000. The natives were unable to show titles to their lands except by actual possession. The natives were presumed to be unaware of the Spanish laws concerning registration and documentation of lands by reason of "[t]he uneven Spanish impact, abuses by colonial officials, the absence of effective notice, illiteracy, lack of money to pay for transportation fares and legal prerequisites, e.g., filing fees, attorney's fees, survey costs[.]"[75]

In a final attempt to remedy the problems concerning property registration, the Spanish Government issued the Royal Decree of February 13, 1894, otherwise known as the Maura Law. It was the last land law promulgated by the Spanish colonial regime in the Philippines.[76] The preamble provided that the law's purpose is to, "insure to the natives, in the future, whenever it may be possible, the necessary land for cultivation, in accordance with traditional usages."[77] However, a contrary intention was revealed in Article 4 of the law, which provides:

> The title to all agricultural lands which were capable of adjustment under the Royal Decree of 1880, but the adjustment of which has not been sought at the time of promulgation of this Decree . . . will revert to the State. Any claim to such lands by those who might have applied for adjustment of the same but have not done so at the time of the above-mentioned date, will not avail themselves in any way or at any time.[78]

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[74] Id.

[75] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L. J. 82, 107 (1988).

[76] Id. at 108.

[77] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 275 (1982).

[78] As cited in John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

The Maura law imposed a unilateral registration deadline[79] to all natives for their customary claims over their lands, otherwise, their land will be taken away or confiscated by the Crown.[80] In a sense, it was the first law which empowered the Spanish government to deny legal recognition of the native's customary property rights. It was a manifestation of "the colonial regime's insensitivity to the plight and potentials of the masses."[81]

The law's effects, based on wrong premises, proved to be enduring. It was later used by the American colonizers as basis to deny recognition of ancestral property rights. Further, the law became the foundation for what will be the known as the Regalian Doctrine in modern times.[82]

II

On the international scale, war broke out between Spain and the United States of America. Spain surrendered on May 1, 1898, and the United States was set to secure a sovereign claim over the Philippines.[83]

On December 10, 1898, Spain ceded the Philippines to the United States through the Treaty of Paris. The Treaty provided that all immovable properties which, in conformity with law, belonged to the Crown of Spain, had been relinquished and ceded to the United States. Nevertheless, Article VIII of the Treaty recognized that, "the relinquishment and cession . . .

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[79] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 Phil. L.J. 82, 108 (1988).

[80] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose Land, Which Lands*, 42 ATENEO L. J. 159, 174 (1997).

[81] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Sea (1565-1898)*, 63 PHIL. L. J. 82, 109 (1988).

[82] Id.

[83] Owen James Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 294 (1987) *citing* G. DEWEY, AUTOBIOGRAPHY OF GEORGE DEWEY, ADMIRAL OF THE NAVY, 222 (1913).

cannot in any respect impair the property rights which by law belong to peaceful possession."[84]

In 1899, the first Philippine Commission, also known as the Schurman Commission, started to receive reports as to the vast tracts of lands considered to be private. However, they were more interested in the extent of land rights acquired by the United States and focused its attention to the Philippine archipelago's public domain. Investigations were then conducted, which revealed that almost half of the archipelago was considered public.[85] This estimate notwithstanding, only 10% of the total land mass was documented and recognized by the Spanish Regime:

> The remaining portions of the private domain belonged to hundreds of thousands of people who held, or were believed to hold, undocumented customary rights or some local variation of a customary/colonial right which lacked proper documentation.[86]

President William McKinley (President McKinley) then issued a directive, ordering the Philippine Commission:

> [T]o impose, regardless of custom, "upon every branch and division of the colonial government" the "inviolable" constitutional mandates that no person shall be deprived of property without due process of law and that just compensation be paid for all private property taken for public use[.][87] (Citation omitted)

The Taft Commission disregarded not only President McKinley's instruction, but likewise its predecessor's findings,

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[84] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982). *See also* Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws (1900-1913)*, 63 PHIL. L. J. 249 (1988).

[85] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 250 (1988).

[86] Id.

[87] Id. at 250-251.

and claimed that "Article VIII vested ownership of 92.3% of the total Philippine land mass, or approximately 27,694,000 hectares, in the U.S. Government."[88] This percentage included forest lands and mineral resources, which were considered part of the public domain. In effect, the Taft Commission's estimate discounted the undocumented property rights possessed by Filipino groups over their respective ancestral lands and domains.[89]

Subsequently, the United States Congress passed the Organic Act of July 1, 1902, otherwise known as the Philippine Bill. It extended to the Filipino people most of the guarantees in the American Bill of Rights which included the constitutional right not to be deprived of private property without due process of law and just compensation.[90] Section 13 of the Philippine Bill likewise authorized the Philippine Commission to promulgate rules concerning disposition of public lands.[91] Section 14 further empowered the Philippine Commission to prescribe the rules for perfecting titles to public lands by qualified applicants.[92]

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[88] Id. at 251.

[89] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 250 (1988).

[90] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982).

[91] Philippine Bill of July 1, 1902, sec. 13 provides:

SECTION 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.

[92] Philippine Bill of July 1, 1902, sec. 14 provides:

SECTION 14. That the Government of the Philippine Islands is hereby

Finally, Section 16[93] mandated that in the sale of public domain, actual occupants shall be given preference.[94]

Shortly thereafter, or on November 6, 1902, the Land Registration Act was enacted. It established, among others, the Court of Land Registration tasked to hear applications for registration filed pursuant to its provisions.[95] It likewise

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authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their title to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine Commission is authorized to issue patents, without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectares in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety-eight.

[93] Philippine Bill of July 1, 1902, sec. 16 provides:

SECTION 16. That in granting or selling any part of the public domain under the provisions of the last preceding section, preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said Government to any other person without the consent thereto of said prior occupant or settler first had and obtained: Provided, That the prior right hereby secured to an occupant of land, who can show no other proof of title than possession, shall not apply to more than sixteen hectares in any one tract.

[94] Owen James Jr. Lynch, *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982).

[95] Act No. 496, sec. 2 provides:

SECTION 2. A court is hereby established to be called the "Court of Land Registration," which shall have the exclusive jurisdiction of all applications for the registration under this Act of title to land or buildings or an interest therein within the Philippine Islands, with power to hear and determine all questions arising upon such applications, and also have jurisdiction over such other questions as may come before it under this Act, subject, however, to the right of appeal, as hereinafter provided. The proceedings upon such applications shall be proceedings *in rem* against the land and the buildings and improvements thereon, and the decrees shall operate directly on the land and the buildings and improvements thereon, and vest and establish title thereto.

empowered the Court of Land Registration to adjudicate conflicting claims to title.[96]

The enactment of the Land Registration Act saw the implementation of a "complete system of registration on the general lines of the Torrens system."[97]

The Torrens system created a guarantee that certificates of title over lands shall be indefeasible[98] and that "all claims to the parcel of land are quieted upon issuance of said certificate[,]"[99] thus:

> The Torrens system registers and guarantees the legal rights of private land owners. The system was devised during the 1830s by Sir Robert Torrens who had served as commissioner of customs in South Austria before becoming a land registrar of deeds. . . .
>
> The Torrens system promotes the use of land as a marketable commodity. Unlike customary systems, a Torrens title holder need have no relation to the land other than what is stated in the Torrens document. A Torrens title holder is also generally free to convey his or her rights to anyone, regardless of whether or not they belong to the community where the land is located or whether they intend to use the land or leave it idle.[100]

Subsequently, Act No. 926, otherwise known as the Public Land Act, was passed. It provided for the various modes as to how public lands can be alienated either through a homestead application, sale, lease, issuance of free patents to native settlers, creation of town sites, or for perfection of titles and Spanish

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[96] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 281 (1982).

[97] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 281 (1988).

[98] Id. at 282.

[99] J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 941 (2000) [Per Curiam, En Banc].

[100] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 282 (1988).

grants. In this regard, the Public Land Act recognized the natives' rights over land that they have continuously occupied and cultivated, either by themselves or through their ancestors:

> SECTION 32. Any native of the Philippine Islands now as occupant and cultivator of unreserved, unappropriated agricultural public land, as defined by the Act of Congress of July first, nineteen hundred and two, who has continuously occupied and cultivated such land, either by himself or through his ancestors, since August first, eighteen hundred and ninety; or who prior to August first, eighteen hundred and ninety eighty continuously occupied and cultivated such land for three years immediately prior to said date, and who has been continuously since July fourth, nineteen hundred and two, until the date of the taking effect of this Act, an occupier and cultivator of such land, shall be entitled to have a patent issued to him without compensation for such tract of land, not exceeding sixteen hectares, as hereinafter in this chapter provided.

In 1919, Act No. 2874[101] superseded Act No. 926. The second Public Land Act "was more comprehensive in scope but limited the exploitation of agricultural lands to Filipinos and Americans and citizens of other countries which gave Filipinos the same privileges."[102]

The Public Land Act was followed by Act No. 1148 or the Forest Act. Prior to its enactment on May 7, 1904, the Organic Law of July 1, 1902 already provided, to some extent, the legal framework and procedure for the allocation of legal rights relating to forest lands and the resources found there. The Organic Law provided that the United States Government shall have the power "to issue licenses to cut, harvest, or collect timber or other forest products."[103] The Organic Law proscribed the cutting, destruction,

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[101] Republic Act No. 2874, sec. 128 provides:

> Section 128. Act Numbered Nine hundred and twenty-six known as the "Public Land Act," and all acts and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed.

[102] *See* J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 940 (2000) [Per Curiam, En Banc].

[103] Owen James Lynch, Jr., *Invisible Peoples and a Hidden Agenda: The Origins of Contemporary Philippine Land Laws*, 63 PHIL. L. J. 249, 272 (1988).

removal, or appropriation of forest resources "except by special permission of [the] Government and other such regulations as it may prescribe."[104]

Gifford Pinchot, an official of the United States Forest Service and primary author of the Forest Act, believed that forests must be harvested on a commercial scale. By this reason, the Forest Act contained provisions which empowered the United States Government "to issue licenses for up to [20] years 'for the cutting, collection, and removal of timber, firewood, gums, resins, and other forest products.'"[105]

One of the salient provisions of the Forest Act is the authority given to the bureau chief to grant gratuitous licenses for the free use of timber and other forest products, provided that it shall be reasonable in quantity, within definite territorial limits, and that it is only for domestic purposes.[106]

An amendment to the free use provision was later introduced, allowing the bureau director to designate specific parcels of land as communal forests. Persons who wish to utilize timber and other forest products were free to do so within the designated communal forests. After the said amendment took place, numerous municipalities and townships applied for the grant and designation for communal forests within their jurisdiction.[107]

Meanwhile, by reason of the deteriorating condition of the public forest, the United States Government issued General Order No. 92 to address the unauthorized practice of swidden farming or *kaingin* which the Americans considered as "the most destructive agency in the Philippine forests[.]"[108]

The legal prohibition against swidden farming proved to be ineffective in most forest zones. The United States Government

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[104] Id.

[105] Id. at 273.

[106] Id. at 274.

[107] Id. at 276.

[108] Id. at 277.

claimed that municipal and provincial authorities had full knowledge of the swidden farming happening within their jurisdiction, but had not acted upon it in any way.[109]

United States Government officials lamented the continued practice of swidden farming. They stated that if the Filipinos were left on their own devices and desire to continue with their practice of swidden farming, it would "consume their capital as well as their interests."[110]

Interestingly, this sentiment from United States Government officials confirmed a degree of autonomy enjoyed by rural people, including municipal and provincial officials, away from the centralized nature of the American regime. This also revealed the erroneous perception that Filipinos who practiced swidden farming are considered as destroyers of forest resources.[111]

III

In 1936, Commonwealth Act No. 141 was enacted. It provides for the methods by which the government may dispose of agricultural lands, namely: "(1) [f]or homestead settlement; (2) [b]y sale; (3) [b]y lease; [and] (4) [b]y confirmation of imperfect or incomplete titles[.]"[112]

Further, as mentioned in Associate Justice Reynato Puno's separate opinion in *Cruz v. Secretary of Natural Resources*:[113]

> Commonwealth Act No. 141 remains the present Public Land Law and it is essentially the same as Act 2874. The main difference between the two relates to the transitory provisions on the rights of American citizens and corporations during the Commonwealth period at par with Filipino citizens and corporations.[114] (Citation omitted)

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[109] Id. at 278.

[110] Id.

[111] Id.

[112] Com. Act No. 141, sec. 11.

[113] 400 Phil. 904, 941 (2000) [Per Curiam, En Banc].

[114] Id.

Amendments to Commonwealth Act No. 141 were made in 1964. Otherwise known as the Manahan Amendments, Republic Act No. 3872 introduced the following amendments to Sections 44 and 48:

SECTION 1. A new paragraph is hereby added to Section 44 of Commonwealth Act Numbered One hundred forty-one, to read as follows:

> "SEC. 44. Any natural-born citizen of the Philippines who is not the owner of more than twenty-four hectares and who since July fourth, nineteen hundred and twenty-six or prior thereto, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twenty-four hectares.
>
> "A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, whether disposable or not since July 4, 1955, shall be entitled to the right granted in the preceding paragraph of this section: Provided, That at the time he files his free patent application he is not the owner of any real property secured or disposable under this provision of the Public Land Law."

SECTION 2. A new sub-section (c) is hereby added to Section 48 of the same Act to read as follows:

> . . . .
>
> "(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof." (Underscoring supplied)

Led by Senator Manuel Manahan, then-Chairman of the Senate Committee on National Minorities, the amendments' objective

was to address the cultural minorities' continuing loss of their ancestral homes by reason of the "grant of pasture leases or permits to the more aggressive Christians[.]" It was "to give Tribal Filipinos 'a fair chance and equal opportunity' to acquire title to public lands."[115]

The Manahan amendments had the effect of creating "a distinction between applications for judicial confirmation of imperfect titles by members of national cultural minorities and applications by other qualified persons in general[,]"[116] thus:

> Members of cultural minorities may apply for confirmation of their title to lands of the public domain, *whether disposable or not*; they may therefore apply for public lands even though such lands are legally forest lands or mineral lands of the public domain, so long as such lands are *in fact suitable for agriculture*. The rest of the community, however, "Christians" or members of mainstream society may apply only in respect of "agricultural lands of the public domain," that is, "disposable lands of the public domain" which would of course exclude lands embraced within forest reservations or mineral land reservations.[117] (Emphasis in the original.)

In 1977, the distinction established by the Manahan amendment was expressly abandoned by Presidential Decree No. 1073 when the latter limited the application of Section 48 (b) and (c) "to alienable and disposable lands of the public domain[.]"[118]

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[115] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 290 (1982).

[116] *Republic v. Court of Appeals*, 278 Phil. 1, 15 (1991) [Per J. Feliciano, Third Division].

[117] Id.

[118] Pres. Decree No. 1073, sec. 4 provides:

SECTION 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, since June 12, 1945.

IV

After the Philippines gained its independence from the United States, the Filipino people ratified the 1935 Constitution on May 14, 1935.[119]

One of the primary objectives of the framers of the 1935 Constitution was to guarantee "the nationalization and conservation of the natural resources of the country."[120] They considered it to be of great importance to ensure that the State's power of control over the natural resources was recognized and established. By this reason, the delegates to the Constitutional Convention adopted and incorporated Article XIII, Section 1 in the 1935 Constitution,[121] which states:

> SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

Article XIV, Section 8 of the 1973 Constitution echoed the same provision:

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[119] Official Gazette, *The Commonwealth of the Philippines*, available at <https://www.officialgazette.gov.ph/the-commonwealth-of-the-Philippines/> (last accessed on January 5, 2020).

[120] *See* J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 942 (2000) [Per Curiam, En Banc].

[121] Id.

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.

In the same way, Article XII, Section 2 of the 1987 Constitution provides:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The abovementioned constitutional provision has been interpreted and construed to embody the feudal theory of *jura regalia* or the Regalian Doctrine.

My esteemed colleague, Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa) is of the view that ancestral domains and lands are beyond Section 77's coverage.[122]

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[122] J. Caguioa, Separate Opinion, pp. 5-6.

He insists that the law only covers public and private lands to which categories ancestral domains and lands neither apply.[123] He maintains that ancestral domains and lands are indisputably presumed to have been held by the ICCs/IPs under a claim of ownership even before the Spanish Conquest, and deemed to have never been part of the public domain.[124]

Associate Justice Caguioa opines that the indigenous concept of ownership notwithstanding, ICCs/IPs are only granted the right to sustainably use the natural resources found in ancestral domains.[125] He postulates that ownership over the natural resources remains with the State and the ICCs/IPs' right is limited to managing and conserving these resources for future generations.[126]

Associate Justice Estela M. Perlas-Bernabe shares Associate Justice Caguioa's sentiment that the right accorded to ICCs/IPs with respect to natural resources found in their ancestral domain is limited to the utilization of these resources.[127]

With utmost respect to my colleagues, it is my opinion that the indigenous concept of ownership covers not only the ancestral domains and land, but also the natural resources found there.

The State's alleged ownership over the natural resources is founded on the doctrine of *jura regalia*, which provides that "all lands of the public domain as well as all natural resources enumerated therein, whether on private or public land, belong to the State."[128]

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[123] Id. at 6-8.

[124] Id. at 8-9.

[125] Id. at 13-14.

[126] *See* J. Caguioa, Separate Opinion, p. 16 *citing* J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904 (2000) [Per Curiam, En Banc].

[127] J. Perlas-Bernabe, Separate Opinion, pp. 3-4.

[128] J. Brion, Separate Opinion in *La Tondeña, Inc. v. Republic*, 765 Phil. 795, 823 (2015) [Per J. Leonen, Second Division].

I reiterate my opinion previously expressed in *Heirs of Malabanan v. Republic*,[129] *Republic v. Tan*,[130] and *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*,[131] that the 1987 Constitution does not provide for the Regalian Doctrine.

A perusal of Article XII, Section 2 of the 1987 Constitution reveals that the State's ownership of lands is limited to "lands of the public domain[.]" Further, "[l]ands that are in private possession in the concept of an owner since time immemorial are considered never to have been public[,]" since the state never owned them.[132]

In addition, the doctrine of *jura regalia* is a feudal theory introduced by the Spaniards. However, its application in the Philippines was put to an end upon the arrival of the Americans. The landmark case of *Cariño v. Insular Government*[133] clarified on this matter.[134]

On June 22, 1903, Mateo Cariño (Cariño), an Igorot of the Province of Benguet, filed a petition before the Court of Land Registration in order to register a piece of land located in the same province.[135] According to Cariño, he and his ancestors

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[129] J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 203-209 (2013) [Per J. Bersamin, En Banc].

[130] J. Leonen, Separate Opinion in *Republic v. Tan*, 780 Phil. 764, 776-778 (2016) [Per J. Brion, Second Division].

[131] J. Leonen, Separate Opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, G.R. Nos. 202897, 206823 & 207969, August 6, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65416> [Per J. Hernando, En Banc].

[132] J. Leonen, Separate Opinion in *Republic v. Tan*, 780 Phil. 764, 776 (2016) [Per J. Brion, Second Division].

[133] *Cariño v. Insular Government*, 212 U.S. 449, 456 (1909).

[134] J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic*, 717 Phil. 141, 208-209 (2013) [Per J. Bersamin, En Banc].

[135] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 276 (1982).

owned the land over 50 years before the Treaty of Paris. They have maintained fences for cattle and have cultivated the land subject of the petition for registration. Furthermore, they have been recognized as owners of the land by the other Igorots. Cariño also stated that he had inherited the land from his father in accordance with Igorot custom, and that he had made prior applications before the Spanish Crown to register the land, but nothing seemed to have come of it.[136]

The Court of Land Registration gave due course to the petition for registration. However, the Benguet Court of First Instance reversed the decision on appeal and dismissed Cariño's application. This decision was affirmed by the Philippine Supreme Court.[137]

Through a writ of error, the case reached the United States Supreme Court. It reversed the Philippine Supreme Court's decision and upheld Cariño's ownership of the land in question. The United States Supreme Court decreed that, whatever Spain's position may have been in relation to the status of Cariño's application for registration, it does not follow that he had lost his rights over the land subject of registration when the United States assumed sovereignty over the Philippines. Thus:

> The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.[138]

Citing the Philippine Bill of 1902, the United States Supreme Court went on further and held:

> In the light of the declaration that we have quoted from section 12, it is hard to believe that the United States was ready to declare in the next breath that "any person" did not embrace the inhabitants of Benguet, or that it meant by "property" only that which had become

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[136] *Cariño v. Insular Government*, 212 U.S. 449, 456 (1909).

[137] *Cariño v. Insular Government*, 7 Phil. 132 (1906) [Per J. Willard, En Banc].

[138] *Cariño v. Insular Government*, 212 U.S. 449, 458 (1909).

such by ceremonies of which presumably a large part of the inhabitants never had heard, and that it proposed to treat as public land what they, by native custom and by long association — one of the profoundest factors in human thought — regarded as their own.

It is true that, by section 14, the government of the Philippines is empowered to enact rules and prescribe terms for perfecting titles to public lands where some, but not all, Spanish conditions had been fulfilled, and to issue patents to natives for not more than 16 hectares of public lands actually occupied by the native or his ancestors before August 13, 1898. But this section perhaps might be satisfied if confined to cases where the occupation was of land admitted to be public land, and had not continued for such a length of time and under such circumstances as to give rise to the understanding that the occupants were owners at that date. We hesitate to suppose that it was intended to declare every native who had not a paper title a trespasser, and to set the claims of all the wilder tribes afloat. It is true again that there is excepted from the provision that we have quoted as to the administration of the property and rights acquired by the United States, such land and property as shall be designated by the President for military or other reservations, as this land since has been. But there still remains the question what property and rights the United States asserted itself to have acquired.

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one ‘’for the benefit of the inhabitants thereof.”[139]

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[139] Id. at 458-460.

Cariño established the notion that Igorots and, by analogy, other groups with similar customs and long associations, have constitutionally protected native titles to their respective ancestral lands.[140] It also emphasized that, based on native custom and long association, there exists a legal foundation that the ancestral lands of some native groups within the Philippine archipelago are owned pursuant to private, communal title.[141]

The doctrine espoused in *Cariño* was further reinforced by the United States Supreme Court in *Reavis v. Fianza*.[142]

Reavis involved two (2) gold mines situated in the province of Benguet. These mines were in a tract of land, the sole and exclusive possession of which belonged to an Igorot named Toctoc. The gold mines were developed by Igorot miners in accordance with their customs.[143]

Toctoc neither had any paper title over the mines nor was he granted concession by the Spanish Government. This notwithstanding, Toctoc's "title and ownership thereto were generally known and recognized by the people of the community[,]" including the Spanish officials.[144]

Upon Toctoc's death, the mines' possession and ownership passed on to his heirs, which included Fianza. Toctoc's heirs continued to live and work on the mines without interruption. However, in 1901, Reavis entered upon the subject mines and proceeded to stake his claims on them. Reavis was in the honest but mistaken belief that the mines were part of the abandoned and forfeited Spanish grant of a certain Holman. Insisting

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[140] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L. J. 268, 278 (1982).

[141] Id. at 279.

[142] 215 U.S. 16 (1909). *See also* Dominique Gallego, *Indigenous Peoples: Their Right to Compensation Sui Generis for Ancestral Territories Taken*, 43 ATENEO L. J. 43, 55 (1998).

[143] *Fianza v. Reavis*, 7 Phil. 610, 613-614 (1907) [Per J. Willard, En Banc].

[144] Id. at 614.

ownership over the mines, Fianza filed a formal protest against Reavis.[145]

When the case reached the United States Supreme Court, it sustained Fianza's claim of ownership of the mines and decreed:

> The appellees are Igorrots [sic], and it is found that, for fifty years, and probably for many more, Fianza and his ancestors have held possession of these mines. He now claims title under the Philippine act of July 1, 1902, chap. 1369, 45, 32 Stat. at L. 691. This section reads as follows:
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> > 'That where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent.'
>
> It is not disputed that this section applies to possession maintained for a sufficient time before and until the statute went into effect. . . . The period of prescription at that time was ten years. . . . Therefore, as the United States had not had the sovereignty of the Philippines for ten years, the section, notwithstanding its similarity to Rev. Stat. 2332, U.S. Comp. Stat. 1901, p. 1433, must be taken to refer to the conditions as they were before the United States had come into power. Especially must it be supposed to have had in view the natives of . . . the islands, and to have intended to do liberal justice to them. By 16, their occupancy of public lands is respected and made to confer rights. In dealing with an Igorrot [sic] of the province of Benguet, it would be absurd to expect technical niceties, and the courts below were quite justified in their liberal mode of dealing with the evidence of possession and the possibly rather gradual settling of the precise boundaries of the appellees' claim. . . . At all events, they found that the appellees and their ancestors had held the claim and worked it to the exclusion of all others down to the bringing of this suit, and that the boundaries were as shown in a plan that was filed and seems to have been put in evidence before the trial came to an end.[146]

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[145] Id. at 615.

[146] 215 U.S. 16 (1909).

Reavis recognized the extent of the natives' rights over their ancestral territories. It acknowledged that their rights extend not only to the lands, but likewise include the natural resources found in them.[147] Accordingly, the State's power over these resources extend only to its regulation. The State, as laid down under Section 57 of IPRA, can only provide for the guidelines and limitation on how these resources can be utilized, thus:

> SECTION 57. Natural Resources within Ancestral Domains. — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

V

There are at least six provisions in the 1987 Constitution which protect the rights of indigenous peoples to their customs, heritage, and traditions:[148] (1) Article 2, Section 22;[149] (2) Article VI, Section 5(2);[150] (3) Article XII, Section 5;[151] (4) Article

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[147] Dominique Gallego, *Indigenous Peoples: Their Right to Compensation Sui Generis for Ancestral Territories Taken*, 43 ATENEO L. J. 43, 55 (1998).

[148] *See* J. Puno, Separate Opinion in *Cruz v. Secretary of Natural Resources*, 400 Phil. 904, 932-1016 (2000) [Per Curiam, En Banc].

[149] CONST., art. II, sec. 22 provides:

> SECTION 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

[150] CONST., art. VI, sec. 5(2) provides:

> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous

XIII, Section 6;[152] (5) Article XIV, Section 17;[153] and (6) Article XVI, Section 12.[154]

The 1987 Constitution has made a noticeable shift from its predecessors. Unlike the 1935 and the 1973 Constitutions, the present Constitution recognizes and expressly guarantees the indigenous peoples' rights to their ancestral lands and ancestral domain. Through these constitutional provisions "the State has effectively upheld their right to live in a culture distinctly their own."[155]

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cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

[151] CONST., article XII, sec. 5 provides:

SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.
The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

[152] CONST., art. XIII, sec. 6 provides:

SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

[153] CONST., art. XIV, sec. 17 provides:

SECTION 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

[154] CONST., art. XVI, sec. 12 provides:

SECTION 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

[155] J. Puno, Separate Opinion in Cruz v. Secretary of Natural Resources, 400 Phil. 904, 960 (2000) [Per Curiam, En Banc].

V (A)

Enacted in 1997, Republic Act No. 8371 or the IPRA seeks to address the "centuries-old neglect of the Philippine indigenous peoples."[156] It is considered as "the principal piece of legislation that would govern with respect to most of the demands of indigenous peoples through their various organizations."[157]

IPRA implements Article II, Section 22 and Article XII, Section 5 of the 1987 Constitution in four (4) ways:

"(a) Firstly, enumerating the civil and political rights of all members of indigenous cultural communities or indigenous peoples, regardless of their relation to ancestral lands or domains;

(b) Secondly, enumerating the social and cultural rights of all members of indigenous cultural communities or indigenous peoples;

(c) Thirdly, recognizing a general concept of indigenous property right and granting title thereto; and

(d) Finally, creating a National Commission on Indigenous Peoples (NCIP) to act as a mechanism to coordinate implementation of the law as well as a final authority that has jurisdiction to issue Certificates of Ancestral Domain/Land Titles."[158]

Section 21[159] of IPRA provides that ICC/IPs shall be accorded rights, protections, and privileges enjoyed by the rest of the

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[156] *Id.* at 963.

[157] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 160 (1998).

[158] Id. at 161.

[159] Republic Act No. 8371 (1997), sec. 21.

SECTION 21. Equal Protection and Non-discrimination of ICCs/IPs. — Consistent with the equal protection clause of the Constitution of the Republic of the Philippines, the Charter of the United Nations, the Universal Declaration of Human Rights including the Convention on the Elimination of Discrimination Against Women and International Human Rights Law, the State shall, with due recognition of their distinct characteristics and identity, accord to the members of the ICCs/IPs the rights, protections and privileges enjoyed by the rest of the citizenry. It shall extend to them the same

citizenry with due regard to their distinct characteristics and identity.[160]

As a result, classification of ICC/IPs by reason of ethnicity shall be deemed impermissible, unless it is made "in due recognition of the characteristics and identity." Classification may be allowed only when its purpose is to provide affirmative action in favor of the ICC/IPs.[161]

V (B)

Another salient principle introduced by IPRA is the ICC/IPs' right to claim ownership over their land as well as the resources found there.

To recall, the ICC/IPs' rights to their ancestral domains and ancestral lands have been recognized as early as *Cariño*. The doctrine introduced in that case, had the effect of extending to any person who has occupied a parcel of land since time immemorial—with or without documentary title, the right to enjoy the protection extended to private property rights since the land is "presumed to have been held in the same way . . . and never to have been public land."[162]

Cariño's implication is to shift to the State the burden of proving that a parcel of land or territory falls within the public

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employment rights, opportunities, basic services, educational and other rights and privileges available to every member of the society. Accordingly, the State shall likewise ensure that the employment of any form of force or coercion against ICCs/IPs shall be dealt with by law.
The State shall ensure that the fundamental human rights and freedoms as enshrined in the Constitution and relevant international instruments are guaranteed also to indigenous women. Towards this end, no provision in this Act shall be interpreted so as to result in the diminution of rights and privileges already recognized and accorded to women under existing laws of general application.

[160] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 161 (1998).

[161] Id. at 162.

[162] Id. at 170.

domain, when the same had been held since time immemorial by the undocumented possessor.[163]

The doctrine espoused in *Cariño* has not yet been overturned and remains a valid basis of the ICC/IPs' claim of ownership.[164]

VI

Two (2) additional modes of acquiring ownership were introduced when IPRA was enacted. ICC/IPs may now apply for a CADT or Certificate of Ancestral Land Title for their ancestral domain or ancestral land, respectively:[165]

"a) *Ancestral Domains* — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

b) *Ancestral Lands* — Subject to Section 56 hereof, refers to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth, or as a consequence of government projects

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[163] Id.

[164] Id. at 171.

[165] Id. at 176-177.

and other voluntary dealings entered into by government and private individuals/corporations, including, but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lots[.]"[166]

The new modes of acquiring ownership introduced by IPRA constitute different kinds of ownership which should not be confused with the concept of ownership under the New Civil Code or the official national legal system.[167] The concept of ownership under the New Civil Code is explained as follows:

Ownership under the New Civil Code is defined under Articles 427 and 428. It is understood as either: ". . . the independent and general power of a person over a thing for purposes recognized by law and within limits established thereby," or "a relation in private law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by public law or the concurrence with the rights of another." Moreover, ownership is said to have the attributes of *jus utendi, fruendi, abutendi, disponendi et vindicandi*. One therefore is said to own a piece of land when s/he exercises, to the exclusion of all others, the rights to use, enjoy the fruits and alienate or dispose of it in any manner not prohibited by law.[168]

On the other hand, IPRA defines indigenous concept of ownership over ancestral domains in the following manner:

SECTION 5. Indigenous Concept of Ownership. – Indigenous concept of ownership sustains the view that ancestral and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's private but community property which belongs to all generations and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights.[169]

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[166] REP. ACT NO. 8371, sec. 3 (a) and (b).

[167] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 178 (1998).

[168] Id. at 178.

[169] Republic Act 8371 (1997), sec. 5.

The concept of ownership introduced by IPRA is distinct in the sense that, unlike the Civil Code which puts emphasis on individual and corporate holders, IPRA stresses the private but communal nature of ancestral domains. Furthermore, IPRA recognizes that ICC/IPs have a claim of ownership, not only upon the ancestral domain, but also on the resources found in them. It acknowledges that the ancestral domain and the resources located therein constitute as the ICC/IPs basis for their cultural integrity.[170]

The indigenous peoples' struggle for their rights have long been enduring. Their struggle for the recognition of their rights to land and self-determination is rooted in their effort for cultural and human survival.[171]

We should honor the struggle of our people. This decision is the least we can do to correct a historical injustice.

ACCORDINGLY, I emphatically join the *ponente* and vote that the Petition be **GRANTED**.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

The factual backdrop of the case is simple and quite straightforward: petitioners, who are members of the Iraya-Mangyan indigenous community and residing within their ancestral domain in the hinterlands of Baco, Oriental Mindoro, within the contemplation of the Republic Act No. (R.A.) 8371 or the Indigenous Peoples' Rights Act (IPRA), felled one *dita*[1]

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[170] Marvic M.V.F. Leonen, *Human Rights and Indigenous Peoples: An Overview of Recent Developments in Policy*, 1998 PHIL. PEACE & HUM. RTS. REV. 159, 179 (1998).

[171] John Jerico Laudet Balisnomo, *Ancestral Domain Ownership and Disposition: Whose land, which lands*, 42 ATENEO L. J. 159, 166 (1997).

[1] Scientific name: *Alstonia scholaris*. Also known as devil's tree (English), rite (Indonesian), pulai (Malay), among others. *See:* <http://apps.worldagroforestry.org/treedb/AFTPDFS/Alstonia_scholaris.PDF>

tree for the construction of a communal toilet, without having first secured a permit from the Department of Environment and Natural Resources (DENR) pursuant to Section 77[2] of the Forestry Reform Code of the Philippines (Presidential Decree No. [P.D.] 705), as amended. The factual context of the case covers a breadth of interwoven legal issues that bear upon the foremost question of whether or not herein petitioners may be rightly convicted.

If peered from a constitutional law angle, the view is fraught with reluctance and equal but contrary propositions exist, in part due to the fact that our laws have evolved with inexactness, and have become open to a plurality of persuasions. The lens of constitutional determination may invite that the case be seen from a "State v. Indigenous Peoples" point of view, on the one hand, or a "healthful ecology" framing, on the other. To my mind, neither viewpoint invalidates the other, for the socio-historically complex relation between indigenous peoples' rights and environmental laws are so inextricably linked that any imprecise step in one direction or another may cost highly for both separate but joined causes.

I would be remiss if I fail to recognize the very valid points raised by Chief Justice Diosdado M. Peralta in his Dissenting Opinion, not the least of which is the overarching reasonable

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[2] SECTION 77. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License*. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

fear that the position I espouse, if followed to its logical conclusion, may open the gates for abuse and perhaps facilitate the ease of pillaging our forest covers. Although I maintain my position that these fears, although grounded, may not be the apt cornerstone from which to best reference the resolution of the present issues, I recognize that the Chief Justice raises real and valid apprehensions, which tell me that this case does not lend itself most suited for the adjudication of these deeply contested questions of law, which may be, for now, best left to the wisdom and clarification of the legislature.

I further submit that the present case may be resolved without needing a constitutional determination or conclusive harmonization of laws. From the more immediate standpoint of criminal law, the facts of this case are clear. I concur with the *ponencia*'s finding that petitioners here do not incur any criminal liability. From the lens of criminal law, the determination of whether the Court has sufficient basis to find that the accused here are guilty of the act betrays gray areas of interpretations and legislative intents behind the penal provision, specifically the acts included in the violation under P.D. 705, one of which was levelled against petitioners. These equivocal areas must, therefore, and until conclusively determined, color the present prosecution with reasonable doubt, which must be resolved in favor of herein accused.

I thus maintain the non-culpability of petitioners for the following reasons: *first*, petitioners may not be found guilty of violating P.D. 705, Sec. 77 as the lands enumerated therein do not include ancestral domains; and *second* in any event, the petitioners' act of cutting the *dita* tree was undertaken with the required "authority." As Sec. 77 itself provides, petitioners' act of cutting a single *dita* tree for the purpose of building a toilet for the use of their community is well within the rights granted to Indigenous Cultural Communities (ICCs) or Indigenous Peoples (IPs) under the IPRA, and is therefore beyond the ambit of the crimes penalized therein, with its authority rising from no less than the Constitution and the bedrock rationale of the IPRA itself.

To be sure, this Opinion does not assert that members of the ICCs/IPs be wholly exempted from the reach of the courts' jurisdiction over criminal offenses. Rather, it submits that there can be no finding of a crime having been committed where none was intended by laws. This Opinion does not look at P.D. 705 with the intention of subverting it and granting sweeping, unmerited exemptions in favor of members of the ICCs/IPs. Plainly, no exemption is being carved out for petitioners, for one cannot be exempted from a law that did not contemplate them, to begin with.

In the ultimate analysis, while I maintain my position that petitioners cannot be held criminally liable for violating P.D. 705, I likewise recognize the reasonable points raised by the Chief Justice in his dissent. I, too, recognize that at least three other members of the Court have also given their positions as regards this case. These opinions are in addition to those espoused by the *ponencia*. Evidently, interpreting the law as it affects the concerns of IPs and the environment invites diverse points of view which hinders the Court from finding accused's guilt beyond reasonable doubt. The ramifications of laying down definitive pronouncements in this case that go beyond the criminal liability of the accused may indeed have far-reaching consequences that are already beyond what is necessary in resolving the instant case.

That being said, I shall lay down the bases for my position that petitioners are not liable under P.D. 705.

Petitioners did not violate P.D. 705, Sec. 77.

P.D. 705, Sec. 77, as amended, states:

> Section 77. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under

Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

This provision punishes two distinct and separate offenses:

(1) cutting, gathering, collecting, or removing timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and

(2) possession of timber or other forest products without the legal documents required under existing forest laws and regulations.[3]

Here, the Information states:

The undersigned Prosecutor, under oath, accuses DIOSDADO SAMA y HINUPAS, DEMETRIO MASANGLAY y ACEVEDA, BANDY MASANGLAY y ACEVEDA, residents of Barangay Baras, Baco, Oriental Mindoro with the crime of Violation of Presidential Decree No. 705 as amended, committed as follows:

That on or about the 15th day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating, and mutually helping one another did and then-and there willfully, unlawfully, feloniously and knowingly cut with the use of unregistered power chainsaw, a *Dita* tree, a forest product, with an aggregate volume

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[3] *Bon v. People*, 464 Phil. 125 (2004); *Lalican v. Hon. Vergara*, 342 Phil. 485 (1997); *Revaldo v. People*, 603 Phil. 332 (2009).

of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php 20,000.00) PESOS, Philippine Currency.

Contrary to law.[4]

Indubitably, petitioners were charged with the first offense — namely, the cutting of a *dita* tree "without any authority."[5] Thus, to be convicted under this charge, the following elements must first be proven:

(1) Act of cutting, gathering, collecting, or removing

i. Timber or forest products from any forest land, or

ii. Timber from alienable or disposable public land, or from private land; and

(2) Absence of any authority to do such act.

Finding both elements to be present, the lower courts convicted petitioners.

Contrary to the foregoing, I submit that petitioners did not violate any of the punishable acts under P.D. 705, Sec. 77. Otherwise stated, the elements of the offense charged are not present in this case. *First*, since the *dita* tree was located within the petitioners' ancestral domain, the offense did not take place in any of the locations contemplated in Sec. 77. In other words, P.D. 705, Sec. 77 is no longer applicable, especially with the enactment of the IPRA. *Second*, even assuming that P.D. 705, Sec. 77 is still applicable to ancestral domains, the absence of a permit from the DENR does not mean that petitioners are guilty of the charge, as they, under the IPRA, already possessed the required "authority" to cut the *dita* tree.

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[4] *Rollo*, pp. 48-49.

[5] Id.

Absence of the first element: petitioners cut the dita tree within their ancestral domain, which is neither "forest land," "alienable or disposable public land," nor "private land."

To be considered a violation of Sec. 77, the law itself requires that the timber or forest product is cut, gathered, collected, or removed from any "forest land," "alienable or disposable public land," or "private land."

Cutting within an ancestral domain of ICCs/IPs was not contemplated by P.D. 705, Sec. 77.

As the Court held in *Savage v. Taypin*[6] "we must strictly construe the statute against the State and liberally in favor of the accused, for penal statutes cannot be enlarged or extended by intendment, implication or any equitable consideration."[7]

It also held in *Centeno v. Villalon-Pornillos*[8] (*Centeno*):

[Penal laws] are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, **the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused**."[9]

In construing penal laws, the Court further held:

x x x If the statute is ambiguous and admits of two reasonable but contradictory constructions, **that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such**. Whatever is not plainly

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[6] G.R. No. 134217, May 11, 2000, 331 SCRA 697.

[7] Id. at 704.

[8] G.R. No. 113092, September 1, 1994, 236 SCRA 197.

[9] Id. at 205. (Emphasis and underscoring supplied)

within the provisions of a penal statute should be regarded as without its intendment.[10]

Here, the lower courts erred in failing to appreciate the location of the *dita* tree, which, again, was well within the petitioners' ancestral domain.

I disagree. On this note, it should be emphasized that "[t]he law does not operate *in vacuo* nor should its applicability be determined by circumstances in the abstract."[11]

I submit that ancestral domains are distinct from public or private lands, and any cutting of timber or forest product therein was not contemplated by Sec. 77 of P.D. 705. Sec. 77 cannot be read in isolation. Its interpretation should not only be construed strictly against the State and in favor of the accused, but it must consider changes brought about by the 1987 Constitution, its recognition of ancestral domains, and the enactment of the IPRA.

"Forest land,"[12] as used in P.D. 705, includes three sub-categories: (1) public forests, (2) permanent forests or forest reserves, and (3) forest reservations, which are defined in the statute itself:

SECTION 3. Definitions. —

a) Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.

b) Permanent forest or forest reserves refers to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes.

x x x x

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[10] Id. (Emphasis and underscoring supplied)

[11] Id. at 205-206.

[12] P.D. 705, Sec. 3(d).

g) Forest reservations refer to forest lands which have been reserved by the President of the Philippines for any specific purpose or purposes. (Underscoring supplied)

From these definitions, it is clear that all subcategories of "forest land" are classified as lands of the public domain.[13] Similarly, and as the name suggests, "alienable or disposable public land"[14] also forms part of the public domain.

On the other hand, while the term "private land" is not expressly defined in P.D. 705, it is indirectly referred to in Sec. 3(mm), which defines a "private right" as "titled rights of ownership under existing laws, and in the case of national minority to rights of possession existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds, and old clearings, but exclude productive forest inclusive of logged-over areas, commercial forests and established plantations of the forest trees and trees of economic values."[15]

To my mind, these definitions do not cover the concept of ancestral domains. ***Ancestral domains are neither "public" nor "private land" as contemplated by Sec. 77 of P.D. 705.***

Ancestral domains were recognized in the 1987 Constitution when it stated that Congress may provide for the applicability of customary laws governing property rights in determining **the ownership and extent of ancestral domains**. Article XII, Sec. 5 of the 1987 Constitution on National Economy and Patrimony states:

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[13] Section 5 of PD 705 affirms this view: "[t]he Bureau [of Forest Development] shall have jurisdiction and authority over all forest land, grazing lands, and all forest reservations including watershed reservations presently administered by other government agencies or instrumentalities."

[14] Section 3(c) defines this as "those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes x x x."

[15] P.D. 705, Sec. 3(mm). (Underscoring supplied)

SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

Implementing the foregoing, Congress enacted the IPRA, which defined ancestral domains as "all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial x x x."[16] These areas even include "forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise x x x."[17] Sec. 3 of the IPRA states:

SECTION 3. *Definition of Terms.* — For purposes of this Act, the following terms shall mean:

a) *Ancestral Domains* — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. **It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise**, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be

[16] IPRA, Sec. 3.

[17] Id.

> exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators[.] (Emphasis and underscoring supplied)

Through the IPRA, the State recognized the rights of the ICCs/IPs to their ancestral domains by virtue of *native title*, and such formal recognition is through the Certificate of Ancestral Domain Title (CADT), if obtained at the election of the ICCs/IPs themselves.[18] *Native title* is defined in the IPRA as "pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest."[19]

This concept of "native title" can be traced back to the 1909 case of *Cariño v. Insular Government*[20] (*Cariño*) where the United States Supreme Court upheld the claim by an IP that the parcels of land owned by him were absolutely owned by him and his predecessors-in-interest through the years, as opposed to the Regalian Doctrine invoked by the Government of the Philippines. Thus:

> Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that **when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed**

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[18] Section 11 of the IPRA:

SECTION 11. *Recognition of Ancestral Domain Rights*. — The rights of ICCs/IPs to their ancestral domains by virtue of Native Title shall be recognized and respected. Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title (CADT), which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated.

[19] IPRA, Section 3 (1).

[20] 41 Phil. 935 (1909).

to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the Organic Act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitudes of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof."[21]

Institutionalizing *Cariño* was one of the principal goals in enacting the IPRA. The sponsorship speeches for the progenitor bills of the IPRA both mentioned *Cariño* as one of the law's conceptual anchors. In his Sponsorship Speech, Senator Juan S. Flavier said:

> x x x [O]ur legal tradition subscribes to the Regalian Doctrine as reinstated in Section 2, Article XII of the Constitution x x x
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> x x x x
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> [But] decisional law has made exception to the doctrine.
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> **As early as 1909, in the case of *Cariño vs. Insular Government,* the court has recognized long occupancy of land by an indigenous member of the cultural communities as one of private ownership, which, in legal concept, is termed "native title." This ruling has not been overturned. In fact, it was affirmed in subsequent cases.**
>
> But the executive department of the government since the American occupation has not implemented the policy. In fact, it was more honored in its breach than in its observance, its wanton disregard shown during the period of the Commonwealth and the early years of the Philippine Republic when government "organized and supported massive resettlement of the people to the land of the ICCs.[22]

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[21] Id.

[22] Sponsorship Speech of Senator Flavier, Legislative History of SBN 1728, II RECORD SENATE 10TH CONGRESS 2ND SESSION 253 (October 16, 1996).

Cariño was also cited as one of the bases for the IPRA in the interpellations of the precursor bill in the House of Representatives.[23]

In jurisprudence, this concept that was rooted in *Cariño* has been recently upheld in the case of *Republic v. Cosalan*,[24] where the Court held that:

> Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." **To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way**.[25]

Ancestral domains and lands are thus unique in that they were never public lands, but may include forest lands, and which the ICCs/IPs have held for their communities under a claim of

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[23] Interpellation of August 20, 1997, 6:15 p.m., I RECORD HOUSE 10TH CONGRESS 3RD SESSION 514 (October 20, 1997):
MR. OSMENA. But you are vesting economic rights upon this community. This is where my whole problem is. Because a Christian Filipino who wants to mine chrome, iron ore, or whatever, has to go to the Department of Energy and Natural Resources and apply for mineral sharing agreements and file a lot of papers. In our Constitution, natural resources are national patrimony. But in this bill, you have – in face, I do not know how is the constitutionality of this provision, you are now giving mineral rights to the members of a cultural community. Is that a correct interpretation, Your Honor?
MR. ANDOLANA. Yes, to some extent, it may be interpreted that way. In fact, the committee has considered that vested prior rights must be respected in a claim of mineral or natural resources.
MR. OSMENA. Again, Your Honor...
MR. ANDOLANA. **But when we are going to recall a decision of the US Supreme Court when we were still under the United States of America, in the case of *Cariño vs. Insular Government*, these rights are already vested even before the establishment of the Republic of the Philippines and even before the Spanish regime.** (Emphasis supplied)

[24] *Republic v. Cosalan*, G.R. No. 216999, July 4, 2018, 870 SCRA 575.

[25] Id. at 587. (Emphasis supplied)

private ownership. Thus, these are ***indisputably presumed*** to have been held in this way before the Spanish Conquest.

Expanding on this peculiar nature of ancestral domains, which he describes as neither public nor private lands, former Chief Justice Reynato S. Puno, in his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*[26] (*Cruz*), stated:

> **The right of ownership and possession of the ICCs/IPs to their ancestral domains is held under the indigenous concept of ownership. This concept maintains the view that ancestral domains are the ICCs/Ips[‘] private but community property. It is private simply because it is not part of the public domain. But its private character ends there. The ancestral domain is owned in common by the ICCs/IPs and not by one particular person**. The IPRA itself provides that areas within the ancestral domains, whether delineated or not, are presumed to be communally held. **These communal rights, however, are not exactly the same as co-ownership rights under the Civil Code**. Co-ownership gives any co-owner the right to demand partition of the property held in common. The Civil Code expressly provides that "[n]o co-owner shall be obliged to remain in the co-ownership." Each co-owner may demand at any time the partition of the thing in common, insofar as his share is concerned. To allow such a right over ancestral domains may be destructive not only of customary law of the community but of the very community itself.
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> **Communal rights over land are not the same as corporate rights over real property, much less corporate condominium rights**. A corporation can exist only for a maximum of fifty (50) years subject to an extension of another fifty years in any single instance. Every stockholder has the right to disassociate himself from the corporation. Moreover, the corporation itself may be dissolved voluntarily or involuntarily.
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> **Communal rights to the land are held not only by the present possessors of the land but extends to all generations of the ICCs/IPs, past, present and future, to the domain**. This is the reason why the ancestral domain must be kept within the ICCs/IPs themselves. The domain cannot be transferred, sold or conveyed to other persons. It belongs to the ICCs/IPs as a community.[27]

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[26] G.R. No. 135385, December 6, 2000, 347 SCRA 128.

[27] Id. at 222-223. (Emphasis and underscoring supplied, italics omitted)

Chief Justice Puno went on to state that "[f]ollowing the constitutional mandate that 'customary law govern property rights or relations in determining the ownership and extent of ancestral domains,' *the IPRA, by legislative fiat, introduces a new concept of ownership. This is a concept that has long existed under customary law*."[28] He continues:

> **Custom, from which customary law is derived, is also recognized under the Civil Code as a source of law**. Some articles of the Civil Code expressly provide that custom should be applied in cases where no codal provision is applicable. In other words, in the absence of any applicable provision in the Civil Code, custom, when duly proven, can define rights and liabilities.
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> **Customary law** is a **primary**, not secondary, source of rights under the IPRA and uniquely applies to ICCs/IPs. **Its recognition does not depend on the absence of a specific provision in the civil law**. The indigenous concept of ownership under customary law is specifically acknowledged and recognized, and coexists with the civil law concept and the laws on land titling and land registration.
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> x x x x
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> The moral import of ancestral domain, *native land* or *being native* is "belongingness" to the land, being people of the land — by sheer force of having sprung from the land since time beyond recall, and the faithful nurture of the land by the sweat of one's brow. This is fidelity of usufructuary relation to the land — the possession of stewardship through perduring, intimate tillage, and the mutuality of blessings between man and land; from man, care for land; from the land, sustenance for man.[29]

Clearly, the ICCs/IPs' ownership of their ancestral domains is unique. It is different from the "titled ownership under existing laws" or "right of possession" by "national minorities" contemplated by P.D. 705. ICCs/IPs have ownership — not mere possession — that is characterized as "private but communal," a description that is antithetical to the concept of "titled ownership" as known in civil law.

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[28] Id. at 223.

[29] Id. at 224-225. (Emphasis supplied, italics omitted)

Given the foregoing, the letter of P.D. 705, Sec. 77 cannot be conceived to cover the cutting of timber or forest products in ancestral domains, as to do so would be a strained construction of a penal statute. It would penalize an act despite the lack of textual support to make it so. It would be an arbitrary and baseless expansion of a penal statute.

The foregoing disquisition thus begs the question: If P.D. 705, Sec. 77 is not applicable to ancestral domains, does this mean that timber and forest products found therein can be cut by anyone — IPs or non-members of IPs alike — without limitations?

The answer would be in the negative.

In cases where non-members of IPs illegally cut trees in ancestral domains, it would still be punishable, not by P.D. 705, Sec. 77, but by the penal provisions of the IPRA, particularly Sec. 72 in relation to Sec. 10, which states:

SECTION 10. *Unauthorized and Unlawful Intrusion*. — **Unauthorized** and unlawful intrusion upon, or **use of any portion of the ancestral domain**, or any violation of the rights hereinbefore enumerated, shall be punishable under this law. Furthermore, the Government shall take measures to prevent non-ICCs/IPs from taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure ownership, possession of land belonging to said ICCs/IPs. (Emphasis and underscoring supplied)

In fact, compared to P.D. 705, Sec. 77, the provision on "unauthorized and unlawful intrusion" (Sec. 72) bears a heavier penalty:

SECTION 72. *Punishable Acts and Applicable Penalties*. — Any person who commits violation of any of the provisions of this Act, such as, but not limited to, **unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10**, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI hereof, shall be punished in accordance with the customary laws of the ICCs/IPs concerned: *Provided*, That no such penalty shall be cruel, degrading or inhuman punishment: *Provided, further*, That neither shall the death penalty

or excessive fines be imposed. This provision shall be without prejudice to the right of any ICCs/IPs to avail of the protection of existing laws. In which case, **any person who violates any provision of this Act shall, upon conviction, be punished by imprisonment of not less than nine (9) months but not more than twelve (12) years or a fine of not less than One hundred thousand pesos (₱100,000) nor more than Five hundred thousand pesos (₱500,000) or both such fine and imprisonment upon the discretion of the court**. In addition, he shall be obliged to pay to the ICCs/IPs concerned whatever damage may have been suffered by the latter as a consequence of the unlawful act. (Emphasis and underscoring supplied)

The IPRA itself allows non-members of IPs to utilize natural resources in ancestral domains, subject to certain conditions:

SECTION 57. *Natural Resources within Ancestral Domains*. — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. **A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: *Provided*, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation:** *Provided, finally*, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.[30] (Emphasis and underscoring supplied)

Simply put, when it comes to ancestral domains, Sec. 77 of P.D. 705 no longer finds application as it is the provisions of IPRA that have kicked in and now operate.

Do IPs have unbridled discretion as regards the utilization of natural resources which may be found in their ancestral domains? In other words, do the "priority rights" granted by Sec. 57 mean that IPs can exploit the natural resources in ancestral domains without limits? Again, the answer is no.

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[30] IPRA, Sec. 57.

The IPRA recognizes the ICCs/IPs right to the sustainable use of the natural resources found in ancestral domains

A thorough reading of the rights recognized under the IPRA reveals that the IPRA allows ICCs/IPs to utilize the natural resources that may be found in ancestral domains. This is rooted in the indigenous concept of ownership, recognized by the IPRA, which is significantly different from the concept of ownership under civil law.

According to the IPRA,

> [the indigenous] concept of ownership sustains the view that ancestral and all resources found therein shall serve as the material bases of their cultural integrity. The indigenous concept of ownership generally holds that ancestral domains are the ICC's/IP's ***private but community property which belongs to all generations*** and therefore cannot be sold, disposed or destroyed. It likewise covers sustainable traditional resource rights."[31]

In turn, sustainable traditional resource rights refer to the rights of ICCs/IPs to ***sustainably use***, manage, protect and conserve a) land, air, water, and minerals; b) plants, animals and other organisms; c) collecting, fishing and hunting grounds; d) sacred sites; and e) other areas of economic, ceremonial and aesthetic value ***in accordance with their indigenous knowledge, beliefs, systems and practices***.[32]

For IPs, this is easy to understand, as nothing provided for in the IPRA is new to them. The IPRA' simply recognizes what their practices are. This recognition of the rights of IPs is not confined only in the domestic setting — it is reflected as well in the international sphere. The United Nations Declaration on the Rights of Indigenous Peoples[33] (UNDRIP) states that the

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[31] IPRA, Sec. 5.

[32] IPRA, Sec. 3(o).

[33] Although non-binding as it is merely a UNGA Declaration, it constitutes evidence of state practice on the matter. The United Nations describes UNDRIP

United Nations General Assembly (UNGA) "recogniz[es] the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources."[34] Moreover, the provisions of the UNDRIP itself state that:

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Thus, that the IPs have their own ways of life and have a unique relationship with the land they live in, and that States

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as the "most comprehensive international instrument on the rights of indigenous peoples" as 144 states have voted in its favor, including the Philippines, and the 4 countries that initially voted against it have "reversed their position and now support the Declaration." *See*: https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

[34] UNDRIP, preambular clauses.

have a concomitant duty to respect and protect the rights emanating from that, are matters recognized internationally — only made binding to the Philippines by its enactment of the IPRA.

There is thus no doubt that ICCs/IPs are allowed to use the land and the natural resources found in their ancestral domains. To allay any fears that this formulation will mean the unfettered use of the natural resources in ancestral domains, thereby causing irreversible damage to the detriment of future generations, it is important to point out that the IPRA itself clarifies the limitations of the use allowed for ICCs/IPs. As previously discussed, the IPRA only recognizes sustainable traditional resource rights that allows the IPs to "***sustainably use x x x in accordance with their indigenous knowledge, beliefs, systems and practices***"[35] the resources which may be found in the ancestral domains which, in turn, are "private but community property **which belongs to all generations and therefore cannot be sold, disposed or destroyed**."[36] This is complemented by Sec. 7 of the IPRA, which states:

SECTION 7. *Rights to Ancestral Domains.* — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a) *Right of Ownership*. — The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

b) *Right to Develop Lands and Natural Resources*. — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to **manage and conserve natural resources** within the territories and **uphold the responsibilities for future generations**; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the

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[35] IPRA, Section 3(o). (Emphasis and italics supplied)

[36] IPRA, Sec. 5. (Emphasis and underscoring supplied)

> purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights[.] (emphasis and underscoring supplied)

In this connection, I fully agree with Chief Justice Puno's formulation in his Separate Opinion in *Cruz* that the proper reading of the IPRA insofar as the rights of ICCs/IPs to the natural resources are concerned is to read it in the context of small-scale utilization of natural resources by Filipino citizens which is allowed by the Constitution:[37]

> *Ownership over the natural resources in the ancestral domains remains with the State and the ICCs/IPs are merely granted the right to "manage and conserve" them for future generations, "benefit and share" the profits from their allocation and utilization, and "negotiate the terms and conditions for their exploration" for the purpose of "ensuring ecological and environmental protection and conservation measures*." It must be noted that the right to negotiate the terms and conditions over the natural resources covers only their exploration which must be for the purpose of ensuring ecological and environmental protection of, and conservation measures in the ancestral domain. It does not extend to the exploitation and development of natural resources.
>
> *Simply stated, the ICCs/IPS' rights over the natural resources take the form of management or stewardship*. For the ICCs/IPs may use these resources and share in the profits of their utilization or negotiate the terms for their exploration. **At the same time, however, the ICCs/IPs must ensure that the natural resources within their ancestral domains are conserved for future generations and that the "utilization" of these resources must not harm the ecology and environment pursuant to national and customary laws.**

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[37] Article XII, Section 2, paragraph 3 of which states that "[t]he Congress may, by law, allow **small-scale utilization of natural resources by Filipino citizens**, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons."

The limited rights of "management and use" in Section 7 (b) must be taken to contemplate small-scale utilization of natural resources as distinguished from large-scale. Small-scale utilization of natural resources is expressly allowed in the third paragraph of Section 2, Article XII of the Constitution "in recognition of the plight of forest dwellers, gold panners, marginal fishermen and others similarly situated who exploit our natural resources for their *daily sustenance and survival." Section 7 (b) also expressly mandates the ICCs/IPs to manage and conserve these resources and ensure environmental and ecological protection within the domains, which duties, by their very nature, necessarily reject utilization in a large-scale*.[38]

Absence of the second element: petitioners had "authority" to cut the tree under the IPRA

It is clear from the foregoing that the IPRA allows ICCs/IPs to use natural resources found in their ancestral domains, albeit *in a limited way*.[39]

Nevertheless, even assuming that ancestral domains are part of "forest lands," "public lands," or "private lands," as contemplated by P.D. 705, Sec. 77 — it is nonetheless my considered view that petitioners still cannot be held criminally liable because the second element of the crime of violation of P.D. 705 is also not present.

As demonstrated, petitioners' act of cutting the *dita* tree was done "**with authority**" emanating from the IPRA; hence, they cannot be held criminally liable. For a better understanding of the "authority" necessitated by the law, a review of its legislative history is imperative.

In 1974, P.D. 389 or the Forestry Reform Code was enacted. Sec. 69 thereof punished the cutting, gathering, and/or collection of timber or other products from forest land:

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[38] Separate Opinion of Justice Puno in *Cruz v. Secretary of Environment and Natural Resources*, supra note 26 at 233-235. (Italics in the original, emphasis supplied)

[39] Again, the parameters of the IPRA are sustainable use "in accordance with their indigenous knowledge, beliefs, systems and practices."

SECTION 69. *Cutting, Gathering, and/or Collection of Timber or Other Products*. — The penalty of *prision correccional* in its medium period and a fine of five (5) times the minimum single forest charge on such timber and other forest products in addition to the confiscation of the same products, machineries, [equipment,] implements and tools used in the commission of such offense; and the forfeiture of improvements introduced thereon, in favor of the Government, shall be imposed upon any individual, corporation, partnership, or association who shall, **without permit from the Director, occupy or use or cut, gather, collect, or remove timber or other forest products from any public forest, proclaimed timberland, municipal or city forest, grazing land, reforestation project, forest reserve of whatever character; alienable or disposable land**: Provided, That if the offender is a corporation, partnership or association, the officers thereof shall be liable.

The same penalty above shall also be imposed on any licensee or concessionaire who cuts timber from the license or concession of another without prejudice to the cancellation of his license or concession, as well as his perpetual disqualification from acquiring another such license or concession. (Emphasis and underscoring supplied)

In 1975, P.D. 705 was enacted in order to revise several provisions of P.D. 389, including the above-quoted section, to wit:

SECTION 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License*. — **Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit**, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; *Provided*, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or forest products to cut, gathered, collected or removed, and the machinery, equipment, implements and tools used therein, and the forfeiture of his improvements in the area.

The same penalty plus cancellation of his license agreement, lease, license or permit and perpetual disqualification from acquiring any such privilege shall be imposed upon any licensee, lessee, or permittee who cuts timber from the licensed or leased area of another, without prejudice to whatever civil action the latter may bring against the offender. (Emphasis and underscoring supplied)

In 1987, this provision was further amended through Executive Order No. (E.O.) 277, which retains its present wording, to wit:

SECTION 1. Section 68 of Presidential Decree (P.D.) No. 705, as amended, is hereby amended to read as follows:

Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products Without License. – **Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority**, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found. (Emphasis and underscoring supplied)

In 1991, Sec. 68 above was eventually renumbered to Sec. 77 through R.A. 7161.[40]

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[40] R.A. 7161 provides:
SECTION 7. Section 77 of Presidential Decree No. 705, as amended, as numbered herein, is hereby repealed.
Section 68 of Presidential Decree No. 705, as amended by Executive Order No. 277 dated July 25, 1987, and Sections 68-A and 68-B of Presidential Decree No. 705, as added by Executive Order No. 277, are hereby renumbered as Sections 77, 77-A and 77-B.

As regards the "authority" required by law for the cutting, gathering, and/or collecting timber or other forest products, its evolution is summarized below:

P.D. 389 (1974)	**P.D. 705 (1975)**	**E.O. No. 277 (1987)**
"permit from the Director"	"any authority under a license agreement, lease, license, or permit"	"any authority"

The evolution in the language of the law is not without significance. From the preceding discussion, it can be deduced that the authority required by the law has been expanded and is no longer confined to those granted by the DENR. The use of the phrase "any authority" in the law's present wording — ***without any qualification*** — ought to be construed plainly and liberally in favor of petitioners. This is in accordance with the hornbook principle that penal laws shall be construed liberally in favor of the accused.[41] Moreover, applying the doctrine of *casus omissus pro omisso habendus est* (meaning, a person, object or thing omitted from an enumeration must be held to have been omitted intentionally).[42] it can be logically concluded that the limitation on the authority to those issued only by the DENR has been intentionally removed.

Considering the foregoing, I am of the view that the "authority" contemplated in P.D. 705, as amended, should no longer be

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[41] *People v. Temporada*, 594 Phil. 680 (2008).

[42] *Association of Non-Profit Clubs, Inc. v. Bureau of Internal Revenue*, G.R. No. 228539, June 26, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65316>.

limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA.[43]

To have a strict interpretation of the term "authority" under Sec. 77 of P.D. 705 despite the clear evolution of its text would amount to construing a penal law ***strictly against*** the accused, which cannot be countenanced. To stress,

> [o]nly those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought.[44]

More importantly, to construe the word "authority" in P.D. 705, Sec. 77 as excluding the rights of ICCs/IPs already recognized in the IPRA would unduly undermine both the text and the purpose of this novel piece of legislation and significantly narrow down the rights recognized therein.

The varying positions in the case show reasonable doubt which calls for petitioners' acquittal

The discussion above lays down my position that petitioners cannot be held liable for violating P.D. 705. Nevertheless, even if the premises I have laid down would be rejected by the Court, I maintain that petitioners in this case should be acquitted.

Contrary to the assertions I have put forth, Chief Justice Peralta dissents and puts the present issues in a different perspective,

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[43] This should not be taken to mean that mere ownership, especially as understood in civil law, already constitutes the "authority" required by Sec. 77, P.D. 705. As discussed, the ownership exercised by the IPs over their ancestral domains is different from the civil law understanding of ownership.

[44] *People v. Garcia*, 85 Phil. 651, 686 (1950).

mainly arguing that the ancestral domains of the indigenous peoples were never carved out from the application of the country's forestry laws, whether by the IPRA or by P.D. 705,[45] and that ancestral domains are not exempted from the regulations in place that pertain to forest use. He adds that the IPRA and P.D. 705 are not pitted against each other, as they cover applications, and complement rather than contradict each other.[46] I most agree that the two laws are not conflicting, and neither one is prevailed upon by the other, as these laws may be both interpreted and applied to the case in a way that breathes life to both, as I have attempted to elucidate above. In any case, and as aptly noted by the Chief Justice's dissent, doubts have been cast as to the applicability of the IPRA to the present case, and since such doubt is on whether or not petitioners were well within their rights when they cut the *dita* tree, such doubt must be resolved to stay the Court's hand from affirming their conviction.

It has been opined that the effect of requiring petitioners to apply for a permit from the DENR to use a resource in their ancestral domain in accordance with their customs is benign, as they are not prohibited from doing so but only imposed upon with prior conditions. This requirement may indeed be benign, and should have simply been complied with by herein petitioners. This simple enough requirement, however, is an operative indication of an underlying constitutional conviction, the conclusiveness of which the Court may not now be prepared to adjudicate. This requirement quietly asks: how can they seek the consent of another without being counterintuitive to the special, nuanced, and self-limiting autonomy granted to them under the law? How can the Court conceive of finding that indigenous communities are as free as the 1987 Constitution can allow, but must, for the act of felling one tree within their land and for their own customary use, have to seek the State's permission? How can the Court lay down these incongruent

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[45] Chief Justice Peralta's Dissenting Opinion, pp. 22-23.

[46] Id.

premises and hold them both true in the same breath? And yet, on the other hand, the Chief Justice, in his dissent, aptly asks the difficult question of where the line must be drawn with respect to the determination of sustainable community use of an IP's ancestral domain resource.

I acknowledge the assertion made by the Chief Justice that "the case before Us presents far more interrelated issues for whether We would like to admit it or not, the seemingly innocuous acquittal of petitioners herein would ultimately result in considerable implications the Court may not have intended."[47] But this caution cuts both ways. The same assertion can be made to a conviction of petitioners — that such, too, may result in considerable implications the Court may not have intended.

To be sure, the facts of this case may not lend itself to all the answers, but perhaps the honor of the work before the Court is in the attempt. I believe that my earlier submission that the self-limiting and tight window within which the indigenous peoples may cut trees from their own ancestral domain without prior permission is narrow enough as to sidestep any need to reconcile rights granted by the IPRA *vis-a-vis* forestry regulations. This supports the primary aspiration that animates the IPRA, that is to restore to ICCs/IPs their land and affirm their right to cultural integrity and customary ways of life, with socio-cultural and legal space to unfold as they have done since time immemorial.

The IPRA's safeguards have been suggested as insufficient, and the IPs rights over their ancestral domain may very well be so easily abused by non-IPs with proprietary interests in the forest lands. Truly, I submit that these are valid reservations. But I humbly offer, as well, that this may not be the proper yardstick against which we measure the considerations of the issues at hand. For the difficulty in arguing based on fear of a disastrous outcome is that it is impossible to disprove albeit

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[47] Dissenting Opinion of Chief Justice Diosdado M. Peralta, p. 40.

not yet true, and in the meantime, the Court is building walls where the legislature may have intended doors.

I submit that perhaps, if not with this case, a tightrope must eventually be walked with respect to the issues of environmental sustainability and indigenous peoples' rights, without having to weaken one to enable the other.

For as affirmed by the IPRA, the cultural identity of the indigenous peoples has long been inseparable from the environment that surrounds it. There is, therefore, no knowable benefit in an indigenous custom or cultural belief that truthfully permits plunder of the environment that they hold synonymous with their collective identity. **No legally sound argument may be built to support the premise that we ought not affirm the freedom of these indigenous peoples because they might exercise such freedom to bulldoze their own rights.**

That the experience on the ground shows abuses from unscrupulous non-members of ICCs/IPs of ancestral domains does not merit that the very same indigenous communities that have been taken advantage of be made to pay the highest cost of relinquishing what little control that was restored to them by law.

And still, and all told, the Court must not forget, the facts of the case remain to be this: two men felling ONE *dita* tree to build one communal toilet for their indigenous community. Although having risen to the heights of contested constitutional interpretations, this case remains to be a criminal one, where the liberty of petitioners hang in the balance.

On this note, it may be well to remember that the case of Cruz which dealt with the constitutionality of the provisions of the IPRA was decided by an equally divided Court.[48] This only goes to show that there are still nuances concerning the

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[48] As the votes were equally divided (7 to 7) and the necessary majority was not obtained, the case was redeliberated upon. However, after redeliberation, the voting remained the same. Accordingly, pursuant to Rule 56, Section, 7 of the Rules of Civil Procedure, the petition is DISMISSED.

rights of IPs within their ancestral land and domain that are very much open to varying interpretations. Prescinding from this jurisprudential history, perhaps the instant case may not provide the most sufficient and adequate venue to resolve the issues brought about by this novel piece of legislation. It would be the height of unfairness to burden the instant case against petitioners with the need to resolve the intricate Constitutional matters brought about by their mere membership in the IP community especially since a criminal case, being personal in nature, affects their liberty as the accused.

The members of the Court may argue one way or the other, but no length of legal debate will remove from the fact that this case is still about two men who acted pursuant to precisely the kind of cultural choice and community-based environmental agency that they believe the IPRA contemplated they had the freedom to exercise. The petitioners hang their liberty on the question of whether or not IPRA, *vis-a-vis* forestry laws, has failed or delivered on its fundamental promise. **That the Court cannot categorically either affirm or negate their belief, only casts reasonable doubt not only as to whether or not they are guilty of an offense, but whether or not there was even an offense to speak of**. At most, this doubt only further burdens the fate of the petitioners with constitutional questions, the answers to which must await a future, more suitable opportunity.

At the very least, this doubt must merit their acquittal.

Based on these premises, I vote to **GRANT** the petition. Petitioners **DIOSDADO SAMA y HINUPAS** and **BANDY MASANGLAY y ACEVEDA**, as well as their co-accused **DEMETRIO MASANGLAY y ACEVEDA**, should be **ACQUITTED** in Criminal Case No. CR-05-8066.

SEPARATE CONCURRING OPINION

ZALAMEDA, *J.*:

Petitioners are before this Court seeking their acquittal from the offense punished under Section 77 of Presidential Decree No. 705 (P.D. 705), specifically the offense of cutting down a tree without the requisite permit or authority. Petitioners, who are members of the Iraya-Mangyan indigenous cultural community (ICC), averred that they are not criminally liable because they were merely exercising their legitimate right to use and enjoy the natural resources within their ancestral domains, and were acting in accordance with their elders' directions.

The People, however, argued that petitioners violated the law when they logged the *dita* tree, for which violation they must be held accountable. They further argue that petitioners, even as members of an indigenous cultural group, enjoy no right more special or distinct from the rest of the Filipino people. Petitioners' mere act of cutting a tree without permit is sufficient for conviction.

I concur in the result reached by my distinguished colleague, J. Lazaro-Javier, in her *ponencia*.

Section 77[1] of P.D. 705, as amended by E.O. No. 277, criminalizes two (2) distinct and separate offenses, namely:

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[1] SECTION 77. Cutting, Gathering and/or collecting Timber, or Other Forest Products Without License. – Any person who shall cut, gather, collect, removed timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

(a) the cutting, gathering, collecting and removing of timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land without any authority; and (b) the possession of timber or other forest products without the legal documents required under existing laws and regulations.[2]

Indisputably, jurisprudence has consistently declared the offenses under Section 77 of P.D. 705 to be *mala prohibita*.[3] In this regard, the People, through the Office of the Solicitor General, is correct in arguing that criminal liability attaches once the prohibited acts are committed, and criminal intent is irrelevant for purposes of conviction.[4]

The *malum prohibitum* nature of an offense, however, does not automatically result to a conviction. **The prosecution must still establish that the accused had intent to perpetrate the act**.[5]

Intent to perpetrate has been associated with the actor's volition, or intent to commit the act.[6] Volition or voluntariness refers to knowledge of the act being done.[7] In previous cases, this Court has determined the accused's volition on a case to case

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The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

[2] *Monge v. People*, G.R. No. 170308, 07 March 2008; 571 Phil. 472-481 (2008).

[3] *Crescencio v. People*, G.R. No. 205015, 19 November 2014; 747 Phil. 577-589 (2014); *Villarin v. People*, G.R. No. 175289, 31 August 2011; 672 Phil. 155-177 (2011); *Revaldo v. People*, G.R. No. 170589, 16 April 2009; 603 Phil. 332-346 (2009).

[4] *Id.*

[5] See *Fajardo v. People*, G.R. No. 190889, 10 January 20ll; 654 Phil. 184-207 (2011).

[6] *ABS-CBN Corp. v. Gozon*, G.R. No. 195956, 11 March 2015; 755 Phil. 709-782 (2015).

[7] *Id*.

basis, taking into consideration the prior and contemporaneous acts of the accused and the surrounding circumstances.[8]

In the early case of *U.S. v. Go Chico*,[9] the accused was convicted of violating Section 1 of Act No. 1696[10] prohibiting the display of any flag, banner, emblem, or device used during the late insurrection in the Philippines against the United States. In affirming the conviction, this Court rejected the accused's defense that proof of criminal intent is a pre-requisite for conviction under Act, No. 1696. The Court explained that there are crimes, such as those punishable under Act No. 1696, where the intention of the person who commits the crime is entirely immaterial. The act itself, without regard to the intention of the doer, produces the evil effects sought to be prevented.

The Court then proceeded to distinguish between intent to commit the crime and intent to perpetrate the act, *viz*:

> Care must be exercised in distinguishing the difference between the intent to commit the crime and the intent to perpetrate the act. The accused did not consciously intend to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself — intent and all. The wording of the law is such that the intent and the act are inseparable. The act is the crime. The accused intended to put the device in his window. Nothing more is required to commit the crime.

In *People v. Bayona*,[11] this Court was faced with determining whether the accused's intention for carrying a firearm within 50 meters from the polling place is material to ruling on the propriety of his conviction. In that case, the accused argued that he had no intention to go inside the polling place, much less to vote or campaign for anybody. The Court found that the accused's intent to perpetrate the act had been sufficiently

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[8] *Dela Cruz v. People*, G.R. No. 209387, 11 January 2016; 776 Phil. 653-701 (2016).

[9] G.R. No. 4963, 15 September 1909; 14 Phil. 128-142 (1909).

[10] The Flag Law (1907).

[11] G.R. No. 42288, 16 February 1935; 61 Phil. 181-186 (1935).

established. However, it clarified that a man with a revolver, who merely passes along a public road on election day within 50 meters of a polling place does not violate the provision of law in question. For the same reason, a peace officer who pursues a criminal, as well as residents within 50 meters of a polling place who merely clean or handle their firearms within their own residences on election day cannot be considered carrying firearms within the contemplation of the legal prohibition.

In *Magno v. Court of Appeals*,[12] however, this Court looked beyond the accused's issuance of a check in order to determine the propriety of his conviction for violating Batas Pambansa Blg. 22 (BP 22). The Court acquitted the accused upon finding that the checks were issued to cover a warranty deposit in a lease contract, where the lessor-supplier was also the financier of the deposit. The Court noted that the accused did not issue the check on account or for value but as part of a *modus operandi* whereby the supplier of the goods is, at the same time, privately financing the transaction. In acquitting the accused, this Court referred to the utilitarian theory, or the "protective theory" in criminal law, which "affirms that the primary function of punishment is the protection of society against actual and potential wrongdoers." The Court did not consider the accused as the wrongdoer, but rather the victim of a vicious transaction.

On the other hand, the Court, in *People v. De Gracia*,[13] discussed intent to perpetrate in the offense of illegal possession of firearms. The Court held that, in addition to proving the fact of possession of a firearm, the prosecution must also establish that the accused had *animus possidendi* or an intent to possess the firearm. Intent being an internal state of mind, courts are allowed to infer it from prior and contemporaneous acts of the accused, and the surrounding circumstances. Thus, the Court considered the background of the accused as a soldier to conclude that he knew the import of having such a large

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[12] G.R. No. 96132, 26 June 1992; 285 Phil. 983-993 (1992).

[13] G.R. Nos. 102009-10, 06 July 1994; 304 Phil. 118-138 (1994).

quantity of explosives and ammunition in his possession. The Court ruled that as long as it is established that the accused freely and consciously possessed the firearm, conviction is proper. Conversely, a temporary, incidental, casual, or harmless possession or control of a firearm cannot be considered as illegal possession of a firearm.

In the same vein, in *People v. Dela Rosa*,[14] this Court acquitted the surrendering rebels of the crime of illegal possession of firearms. The Court ruled that physical or constructive possession of firearms, without *animus possidendi*, is not punishable. The Court found that the four (4) accused had no intent to perpetrate the prohibited act, considering that they already surrendered the firearms prior to the arrival of the police. This Court declared that the accused's possession was harmless, temporary, and only incidental for the purpose of surrendering the weapons to the authorities.

In *Tigoy v. Court of Appeals*,[15] this Court found that the truck driver who transported lumber had intent to perpetrate the offense. After classifying Section 68 of P.D. 705, as amended by Executive Order No. 277, as a *mala prohibita* offense, **the Court stated that conviction for such offense is proper as long as it is established that the act was committed knowingly and consciously.** The Court noted the driver's demeanor upon apprehension by the police — refusing to stop when required by the police and offering "grease money" when he was finally apprehended. The Court held that these actions show the driver had knowledge that he was transporting and was in possession of undocumented lumber in violation of law.

Contrariwise, in *Spouses Veroy v. Layague*,[16] this Court dismissed the criminal case for illegal possession of firearms upon the prosecution's failure to establish that accused spouses

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[14] G.R. No. 84857, 16 January 1998; 348 Phil. 173-189 (1998).

[15] G.R. No. 144640, 26 June 2006; 525 Phil. 613-624 (2006).

[16] G.R. No. 95630, 18 June 1992; 285 Phil. 555-566 (1992).

had knowledge that firearms were stored in their provincial home in Davao.

Meanwhile, in cases with two or more accused, this Court has ruled that intent to perpetrate cannot be deduced from the mere presence of a person at a place where a prohibited act was committed. In *Fajardo v. People*,[17] the Court acquitted one of the accused charged with the offense of illegal possession of firearms because it was not proven that she participated or had knowledge or consent of her co-accused's possession of receivers.

In *Saguin v. People*,[18] the accused were an accountant and cashier, respectively, of a provincial hospital. They were charged with violation of Section 23 of PD 1752,[19] as amended, which punishes the failure to remit contributions and loan payments to the Home Development Mutual Fund. Ruling in favor of the accused, the Court noted that the law was worded to punish failure to remit contributions if the same is "without lawful cause or with fraudulent intent." The Court observed that the accused were justified in their non-remittance because the financial operations of the hospital had been devolved to the provincial government, resulting in confusion as to who was responsible for making the remittance.

In *Dela Cruz v. People*,[20] this Court further elaborated that the defense of the accused must be weighed with the prosecution evidence in determining the presence of *animus possidendi*. In assessing the viability of the defense of planting of evidence, courts should consider: (1) the motive of whoever allegedly planted the illegal firearm(s); (2) whether there was opportunity to plant the illegal firearm(s); and (3) the reasonableness of the situation creating the opportunity. In that case, the Court found it unlikely that the firearms would be planted in accused's

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[17] G.R. No. 190889, 10 January 2011; 654 Phil. 184-207 (2011).

[18] G.R. No. 210603, 25 November 2015; 773 Phil. 614-630 (2015).

[19] Home Development Mutual Fµnd Law of 1980.

[20] G.R. No. 209387, 11 January 2016; 776 Phil. 653-701 (2016).

baggage, as he was a frequent traveler and well-versed with port security measures.

In *Mendoza v. People*,[21] this Court gave credence to the testimony of the accused and his witness that the firearms were placed in the compartment of the motorcycle without his knowledge. The Court noted that the accused was merely a designated driver, and not the owner of the motorcycle; hence, cannot be remotely charged with or presumed to have knowledge of the subject firearm.

Based on the foregoing, it is clear that to determine the presence of an accused's intent to perpetrate a prohibited act, courts may look into the meaning and scope of the prohibition beyond the literal wording of the law. Although in *malum prohibitum* offenses, the act itself constitutes the crime, courts must still be mindful of practical exclusions to the law's coverage, particularly when a superficial and narrow reading of the same with result to absurd consequences. Further, as in *People v. De Gracia*[22] and *Mendoza vs. People*,[23] temporary, incidental, casual, or harmless commission of prohibited acts were considered as an indication of the absence of an intent to perpetrate the offense.

In the United States, the legislature's authority to define criminal acts, and dispense with the requirement of criminal intent for their conviction, is also equally settled.[24] The State may, in the exercise of police power, impose regulatory measures where the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se*. Such class of offenses, in the absence of an express provision to the contrary, do not require

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[21] G.R. No. 234196, 21 November 2018.

[22] *Supra* at note 13.

[23] *Supra* at note 22.

[24] *United States v. Balint*, 258 U.S. 250 (U.S. March 27, 1922); *Morissette v. United States*, 342 U.S. 246, 72 S. Ct. 240 (1952).

a specific criminal intent.[25] However, there are cases where US federal courts order the defendants' acquittal for prohibitory offenses if it is established that they had no knowledge of the prohibition.

In *Lambert v. California*,[26] the US Supreme Court reversed the defendant's conviction for violating a Los Angeles Municipal Code that makes it a criminal offense a felon, convicted elsewhere in California, to be present in Los Angeles without registering with the police. The US Supreme Court explained that conviction is improper if it was not established that the defendant knew the duty to register and where there was no proof of the probability of such knowledge.

The New York district court applied the same reasoning in *United States v. Barnes*,[27] when it reversed the conviction of the defendant, a convicted sex offender in New York, who moved to New Jersey in 2005 without informing the requisite authorities in either state. In that case, the district court found that the defendant could not have complied with the federal law requiring him to update his residence information despite state law necessitating the same procedure. The Court found that the federal and state laws differ in that the latter provided for a dramatically lesser penalty than the former. It also noted the impossibility of compliance since the defendant had no knowledge, at the time he moved to New Jersey and prior to the promulgation of the federal rule, that the same would have retroactive application.

Significantly, the US Supreme Court has always considered the complexities of the subject prohibitory law in fixing the standard of specific criminal intent required for their prosecution. For instance, in *Cheek v. United States*,[28] a tax evasion case, the US Supreme Court ruled that the State must prove that: (1)

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[25] *United States v. Allard*, 397 F. Supp. 429 (D. Mont. July 21, 1975).

[26] 355 U.S. 225, 78 S. Ct. 240 (1957).

[27] 2007 U.S. Dist. LEXIS 53245 (S.D.N.Y. 23 July 2007).

[28] 498 U.S. 192 (U.S. 8 January 1991).

the law imposed a duty on the defendant; (2) he knew the duty required by the law; and (3) he voluntarily and intentionally violated that duty. The defendant, who was prosecuted for tax evasion and failing to file a return, believed that no tax was owing. He asserted his contention that wages are not income and that he was not a taxpayer within the meaning of the law. The US Supreme Court vacated defendant's conviction and remanded the case to the lower court for further proceedings. It held that in the factual determination of knowledge and belief, the defendant must be allowed to present evidence on good faith misunderstanding of the tax law, since such defense would negate the element of knowledge.

A reading of Canadian and Australian case law indicates that courts in these jurisdictions consider the aboriginal background of the accused in determining the criminality of their acts under prohibitive laws.

In *Yanner v. Eaton*,[29] the High Court of Australia upheld the dismissal of the charge against Murrandoo Yaner, a member of the Gunnamulla clan of the Gangalidda tribe of Aboriginal Australians, for taking fauna in the tribe's area without license. Yaner hunted and caught two (2) juvenile estuarine crocodiles in Cliffdale Creek in the Gulf of Carpentaria area in Queensland. He and other members of his clan ate some of the crocodile meat and froze the rest of the meat and the skins of the crocodiles. The High Court, of Australia explained that the aborigines' relationship to their lands transcends the regular subjects of State regulations, *viz*:

> Native title rights and interests must be understood as what has been called "a perception of socially constituted fact" as well as "comprising various assortments of artificially defined jural right" And an important aspect of the socially constituted fact of native title rights and interests that is recognised by the common law is the spiritual, cultural and social connection with the land. **Regulating particular aspects of the usufructuary relationship with traditional**

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[29] [1999] HCA 53, 07 October 1999, <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1999/53.html> (visited on 15 August 2020).

land does not sever the connection of the Aboriginal peoples concerned with the land (whether or not prohibiting the exercise of that relationship altogether might, or might to some extent). That is, saying to a group of Aboriginal peoples, "You may not hunt or fish without a permit," does not sever their connection with the land concerned and does not deny the continued exercise of the rights and interests that Aboriginal law and custom recognises them as possessing. (Emphasis ours)

This acknowledgment of the aborigines' relationship with the land was reiterated in *Akiba v. Commonwealth of Australia*.[30] The High Court of Australia ruled that the Commonwealth Fisheries and the Queensland Fisheries laws, which both required licensing for fishing, did not extinguish the relationship of the aboriginal people to the land, nor extinguish the native title bundle of rights.

On the other hand, the Supreme Court of Canada's opinion in *R v. Sappier; R v. Gray*,[31] is enlightening. In that case, the Supreme Court of Canada affirmed the acquittal of three (3) members of the Maliseet and Mi'kmaq indigenous groups accused of possession and cutting of timber for domestic uses. In finding that wood was integral to the culture of indigenous tribes, the Supreme Court of Canada explained the necessity of adopting a liberal approach in the determination of the existence of a claimed aboriginal right. Despite the lack of direct evidence establishing a nexus between the harvest of wood to each of the tribe's customs and cultural practices, the Court nevertheless inferred that such aboriginal right to log trees exists because it was undertaken for the tribe's survival. It resolved that in order to establish an aboriginal right, a specific activity need not be shown to be a defining feature of a specific indigenous community. It suffices that the practice or act is integral to the distinctive culture of the aboriginal peoples.

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[30] [2013] HCA 33, 07 August 2013, <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2013/33.html>; (visited 16 August 2020).

[31] 2006 SCC 54, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2329/index.do?q=R.+v.+Sappier> (visited 16 August 2020).

The Court also explained that claimed aboriginal right must be viewed in light of modern-day circumstances so as to give effect to their Constitutional policy of protecting the distinctive cultures of aboriginal people, *viz*:

> Although the nature of the practice which founds the aboriginal right claim must be considered in the context of the pre-contact distinctive culture of the particular aboriginal community, **the nature of the right must be determined in light of present-day circumstances**. As McLachlin C.J. explained *in R. v. Marshall*, **"[l]ogical evolution means the same sort of activity, carried on in the modern economy by modern means."** It is the practice, along with its associated uses, which must be allowed to evolve. **The right to harvest wood for the construction of temporary shelters must be allowed to evolve into a right to harvest wood by modern means to be used in the construction of a modern dwelling**. Any other conclusion would freeze the right in its pre-contact form.
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> Before this Court, the Crown submitted that "[l]arge permanent dwellings, constructed from multidimensional wood, obtained by modern methods of forest extraction and milling of lumber, cannot resonate as a Maliseet aboriginal right, or as a proper application of the logical evolution principle", because they are not grounded in traditional Maliseet culture. I find this submission to be contrary to the established jurisprudence of this Court, which has consistently held that **ancestral rights may find modern form**: Mitchell, at para. 13. In Sparrow, Dickson C.J. explained that **"the phrase 'existing aboriginal rights' must be interpreted flexibly so as to permit their evolution over time."** Citing Professor Slattery, he stated that "the word 'existing' suggests that those rights are 'affirmed in a contemporary form rather than in their primeval simplicity and vigour.' In *Mitchell*, McLachlin C.J. drew a distinction between the particular aboriginal right, which is established at the moment of contact, and its expression, which evolves over time. L'Heureux-Dubé J. in dissent in Van der Peet emphasized that **"aboriginal rights must be permitted to maintain contemporary relevance in relation to the needs of the natives as their practices, traditions and customs change and evolve with the overall society in which they live."** If aboriginal rights are not permitted to evolve and take modern forms, then they will become utterly useless. Surely the Crown cannot be suggesting that the respondents, all of whom live on a reserve, would be limited to building wigwams. **If such were the case, the doctrine of**

aboriginal rights would truly be limited to recognizing and affirming a narrow subset of "anthropological curiosities," and our notion of aboriginality would be reduced to a small number of outdated stereotypes. The cultures of the aboriginal peoples who occupied the lands now forming Canada prior to the arrival of the Europeans, and who did so while living in organized societies with their own distinctive ways of life, cannot be reduced to wigwams, baskets and canoes. (Emphasis ours).

The peculiar circumstances of this case require the same liberal approach. This Court simply cannot brush aside petitioners' cultural heritage in the determination of their criminal liability. Unlike the accused in *People v. De Gracia*, petitioners cannot be presumed to know the import and legal consequence of their act. Their circumstances, specifically their access to information, and their customs as members of a cultural minority, are substantial factors that distinguish them from the rest of the population.

Former Chief Justice Reynato Puno, in his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*,[32] explained it aptly:

Indigenous peoples share distinctive traits that set them apart from the Filipino mainstream. They are non-Christians. They live in less accessible, marginal, mostly upland areas. They have a system of self-government not dependent upon the laws of the central administration of the Republic of the Philippines. They follow ways of life and customs that are perceived as different from those of the rest of the population. The kind of response the indigenous peoples chose to deal with colonial threat worked well to their advantage by making it difficult for Western concepts and religion to erode their customs and traditions. The "infieles societies" which had become peripheral to colonial administration, represented, from a cultural perspective, a much older base of archipelagic culture. The political systems were still structured on the patriarchal and kinship oriented arrangement of power and authority. The economic activities were governed by the concepts of an ancient communalism and mutual help. The social structure which emphasized division of labor and

[32] G.R. No. 135385, 06 December 2000; 400 Phil. 904-1115 (2000).

distinction of functions, not status, was maintained. The cultural styles and forms of life portraying the varieties of social courtesies and ecological adjustments were kept constantly vibrant.

Land is the central element of the indigenous peoples' existence. There is no traditional concept of permanent, individual, land ownership. Among the Igorots, ownership of land more accurately applies to the tribal right to use the land or to territorial control. The people are the secondary owners or stewards of the land and that if a member of the tribe ceases to work, he loses his claim of ownership, and the land reverts to the beings of the spirit world who are its true and primary owners. Under the concept of "trusteeship," the right to possess the land does not only belong to the present generation but the future ones as well.

Customary law on land rests on the traditional belief that no one owns the land except the gods and spirits, and that those who work the land are its mere stewards. Customary law has a strong preference for communal ownership, which could either be ownership by a group of individuals or families who are related by blood or by marriage, or ownership by residents of the same locality who may not be related by blood or marriage. The system of communal ownership under customary laws draws its meaning from the subsistence and highly collectivized mode of economic production.

As for the Mangyans, their challenges in availing learning facilities and accessing information are well documented.[33] The location of their settlements in the mountainous regions of Mindoro, though relatively close to the nation's capital, is not easily reached by convenient modes of transportation and communication. Further, the lack of financial resources discourages indigenous families to avail and/or sustain their

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[33] *Dong-Hwan Kwon*, "The Role of Protestant Mission and the Modernization among Mangyans in the Philippines," A Journal of Holiness Theology for Asia-Pacific Contexts, ASIA-PACIFIC NAZARENE THEOLOGICAL SEMINARY, Volume IX, Number 2, December 2013; See also *Cepeda, Cody,* "Mundong Mangyan: How Mindoro's Alangan Mangyan face land disputes, lack of teachers, child marriages," Published in inquirer.net on 27 November 2019, <https://newsinfo.inquirer.net/1194726/mundong-mangyan-how-mindoros-alangan-mangyan-face-land-disputes-lack-of-teachers-childhood-marriages> (visited 06 July 2020).

children's education.[34] Certainly, by these circumstances alone, Mangyans cannot reasonably be compared to those in the lowlands in terms of worldview and behavior.

In the Mangyans' worldview, the forest is considered a common property of all the residents of their respective settlements. This means that they can catch forest animals, gather wood, bamboo, nuts, and other wild plants in the forest without the permission of other residents.[35] They can generally hunt and eat animals in the forest, except those they consider inedible, such as phytons, snakes and large lizards.[36] They employ swiddens or the *kaingin* system to cultivate the land within their settlements.[37]

Based on the foregoing, to hold petitioners to the same standards for adjudging a violation of P.D. 705 as non-indigenous people would be to force upon them a belief system to which they do not subscribe.[38] The fact that petitioners finished up to

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[34] *Ramschie, Cornelis*, The Life and Religious Beliefs of the Iraya Katutubo: Implications for Christian Mission, INFO Vol 11 No 2 (2008), <https://internationalforurn.aiias.edu/images/volllno02/cramschie.pdf> (visited 18 August 2020); *See also Caparoso, Jun, Evangelista, Luisito and Quiñones, Viktor*, The Use of Traditional Climate Knowledge by the Iraya Mangyans of Mindoro, (2018).

[35] *Miyamoto, Masaru*, "The Hanunoo-Mangyan: Society, Religion and Law Among A Mountain People of Mindoro Island," Vol. 2. pp. iii-240. (1988). <http://scholar.google.com.ph/scholar_url?url=https://minpaku.repo.nii.ac.jp/%3Faction%3Drepository_action_common_download%26item_id%3D3249%26item_no%3D1%26attribute_id%3D18%26file_no%3D1&h1=en&sa=X&scisig=AAGBfm2KqOucyQPHeh5miR8ho59QV1xnAw&noss1=l&oi=scholarr> (visited on 01 June 2020).

[36] *Id*.

[37] *Miyamoto, Masaru*, "Hanunoo-Mangyan Social World," Masaru Miyamoto, Vol. 2. pp. 147-195. (1979). <http://scholar.google.com.ph/scholar_url?url/https://minpaku.repo.nii.ac.jp/%3Faction%3Drepository_action_common_download%26item_id%3 D3483%26item_no%3D1%26attribute_id%3D18%26file_no%3D1&h1=en&sa=X&scisig=AAGBfm3pY16BTL3FnBQw7litRsjPAC6MaA&noss1=1&oi=scholarr> (visited on 01 June 2020).

[38] *See* Recognition of Aboriginal Customary Laws (ALRC Report 31). <https://www.alrc.gov.au/publication/recognition-of-aboriginal-customary-

Grade 4 of primary education neither negates their distinct way of life nor justifies lumping indigenous people (IP) with the rest of the Filipino people. Formal education and customary practices are not mutually exclusive, but is in fact, as some studies[39] note, co-exist in Mangyan communities as they thrive in the modern society. It may be opportune to consider that in indigenous communities, customs and cultural practices are normally transferred through oral tradition.[40] Hence, it is inaccurate to conclude that a few years in elementary school results to the total acculturation of IPs.

Moreover, the degree of petitioners' education should be viewed in conjunction with the crime with which they are charged. Compared to killing or any type of assault, cutting a tree without a license is not inherently or obviously wrong as to reasonably give rise to a presumption of knowledge. Taken together with petitioners' custom of communal ownership of natural resources within their ancestral domains, it is unfair to assume that petitioners were aware that they needed to secure a permit for the logging of one (1) tree intended for their community's use, and that failing to do so would result to their incarceration.

It is for the same reason that petitioners' case should be viewed differently from *People v. Macatanda*[41] and *US v. Maqui*,[42] where the accused, a member of an ICC, was charged

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laws-alrc-report-31/18-aboriginal-customary-laws-and-substantive-criminal-liability/>(visited on 07 July 2020).

[39] Bawagan, Aleli, *Customary Justice System Among the Iraya Mangyans of Mindoro*. 29th Annual Conference Ugnayang Pang-Aghamtao, Inc., 25-27 October 2007. Zamboanga (2007). <https://pssc.org.ph/wp-content/pssc-archives/Aghamtao/2009/06_Customary%20Justice%20System%20Among%20the%20Iraya%20Mangyan's%20of%20Mindoro.pdf> (visited 11 September 2020).

[40] Calara, Alvaro. *Ethnicity and Social Mobility in the Era of Globalization: The Journey of the SADAKI Mangyan-Alangans.*" Philippine Sociological Review, vol. 59, 2011, pp. 87-107. JSTOR, < www.jstor.org/stable/43486371> (visited 11 September 2020).

[41] G.R. No. L-51368, 06 November 1981, 195 Phil. 604-612.

[42] 27 Phil. 97.

with cattle rustling. It is easy to understand that membership in an indigenous community, or one's lack of education, is irrelevant for purposes of determining their guilt because such acts are obviously illicit.

As already discussed, Mangyans.perceive all the resources found in their ancestral domain to be communal. They are accustomed to using and enjoying these resources without asking permission, even from other tribes, much less from government functionaries with, whom they do not normally interact. Moreover, by the location of their settlements, links to local government units or information sources are different from those residing in the lowlands.[43] As such, the Court may reasonably infer that petitioners are unaware of the prohibition set forth in Sec. 77 of P.D. 705.

Along with the Supreme Court of Canada's discussion in *R v. Sappier; R v. Gray*,[44] the fact that petitioners used a chainsaw in logging a single *dita* tree should not diminish the connection of the act to the Mangyans' way of life, nor should it be considered as a decisive fact supporting petitioners' conviction for the offense charged. The use of a chainsaw should simply be viewed as a practical means of fulfilling their community's needs using modern and available tools. It should not detract from the fact that it was carried out in obedience to their elders' directives, and consistent with their customs. Acts done within the context of an indigenous cultural community's belief system and way of life should be interpreted flexibly as to allow for modern means of expression.

The acquittal of petitioners do not aim to exempt their specific group not expressly excluded under P.D. 705. To clarify, I do not propose a blanket exemption of all members of ICCs from

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[43] Walpole, Peter W., and Dallay Annawi. *Where Are Indigenous Peoples Going?: Review of the Indigenous Peoples Rights Act 1997 Philippines*, Institute for Global Environmental Strategies, 2011, pp. 83-117, Critical Review Of Selected Forest-Related Regulatory Initiatives: Applying A Rights Perspective, <www.jstor.org/stable/resrep00846.10> (visited l3 September 2020).

[44] *Supra* at note 36.

criminal liability. Certainly, such proposition would unduly impede criminal prosecution to the detriment of the State and the rest of the Filipino people. In voting for acquittal, I simply aim to recognize that the distinct circumstances of the case at bar call for its examination within a broader legal environment extraneous from the letter of the law. Similarly, I do not seek to nullify nor undermine the provision and policy behind P.D. 705. My opinion merely intends to make a determination on the limited issue presented in this petition, *viz*: whether under the circumstances, petitioners who are IPs, should be held criminally liable under P.D. 705 for logging one (1) dita tree within their ancestral domain.

In this regard, I do not find that this Court's decisions in *Lim v. Gamosa*[45] and *PEZA v. Carantes*[46] are determinative of the issue presented in this petition. None of these cases deal with criminal liability arising from a prohibitory law regulating activities of indigenous people within their ancestral domains. At the risk of being repetitive, my vote is simply a result of my determination that the circumstances do not establish petitioners' intent to perpetrate the offense under Sec. 77 of P.D. 705. It is in no way a pronouncement that members of ICCs are absolutely exempted from securing permits to utilize resources. Neither should it be construed as a judicial sanction of small-scale logging or any form of commercial activity involving wood or timber, nor the use of indigenous people as conduits or accomplices to illegal logging operations. In any case, no evidence has been presented that indigenous people or ICCs have, in fact, been engaged or largely responsible in the problem of illegal logging here in the Philippines.

In my opinion, P.D. 705, which took effect in 1975, should be viewed under the prism of the 1987 Constitution which recognizes the right of ICCs. The noble objectives of P.D. 705 in protecting our forest lands should be considered in conjunction with the Constitution's mandate of recognizing our indigenous

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[45] G.R. No. 193964, 02 December 2015.

[46] G.R. No. 181274, 23 June 2010, 635 Phil. 541-554.

groups as integral to our nation's existence.[47] I submit that under our present Constitutional and legal regime, courts cannot summarily ignore allegations or factual circumstances that pertain to indigenous rights or traditions, but must instead carefully weigh and evaluate whether these are material to the resolution of the case. As rightfully noted by Senior Associate Justice Perlas-Bernabe, the enactment of various laws manifests the State's consent to the IPs' limited utilization of the natural resources within their ancestral lands and/or domains. It is my belief that such laws modify the meaning of intent to perpetrate and justify a solicitous approach in determining culpability under Sec. 77 of P.D. 705 if the accused is a member of an ICC.

This does not mean, however, that the Court should create a novel exempting circumstance in the prosecution of illegal logging activities. I am merely proposing that courts make a case-to-case determination whether an accused's ties to an ICC affects the prosecution's accusations or the defense of the accused. Simply put, courts should not ignore indigeneity in favor of absolute reliance to the traditional purpose of criminal prosecution, which are deterrence and retribution.[48] As in this case, if there is proof that the logging of a tree is committed within the legitimate bounds of the exercise of an IP's rights and within their lands or domains, the act cannot be considered a violation of Sec. 77 of P.D. 705.

At any rate, petitioners' unique relations with their lands and the State's recognition of the same through various laws and international concessions put in doubt petitioners' culpability under P.D. 705. The fact that petitioners were apprehended while cutting a single tree, an act which is intrinsically tied to

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[47] *See Ha Datu Tamahig v. Lapinid*, G.R. No. 221139, 20 March 2019.

[48] *See Cunneen, Chris*, Sentencing, Punishment and Indigenous People in Australia, Journal of Global Indigeneity, 3(1), 2018, <http://ro_uow.edu.au/jgi/vol3/iss1/4>(visited on 07 July 2020); *See also* footnote 157 of *Samahan ng mga Progresibong Kabataan v. Quezon City*, G.R. No. 225442, 08 August 2017, 815 Phil. 1067-1174 (2017).

their life in the ICC and within their ancestral domain, puts in question the definition and coverage of the prohibition. I submit that such doubts should be resolved in favor of the accused. *In dubio pro reo*. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[49]

In summation, **an acknowledgment of the Mangyan's unique way of life negates, or at the very least, casts doubt on petitioners' intent to perpetrate the prohibited act**. Taken with the fact that petitioners were caught cutting only one (1) *dita* tree at the time they were apprehended, and that it was done in obedience to the orders of their elders, it is clear that the cutting of the tree was a casual, incidental, and harmless act done within the context of their customary tradition. As the Court of last resort, We are called upon to look into the meaning and scope of the prohibition beyond the literal wording of the law.

In view thereof, I vote to **GRANT** the Petition and acquit the accused on reasonable doubt.

DISSENTING OPINION

PERALTA, *C.J.*:

The facts of the case are simple. Petitioners were charged with violation of Section 68,[1] now Section 77 of Presidential

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[49] *Zafra y Dechosa v. People*, G.R. No. l90749, 25 April 2012, 686 Phil. 1095-1110.

[1] Section 68 of P.D. No. 705 provides:

SECTION 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License*. — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; *Provided*, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the

Decree No. 705 (P.D. No. 705),[2] as amended, for cutting a *Dita* tree within the lands of Baco, Oriental Mindoro, without the authority required therein. The Information reads:

> That on or about the 15th day of March 2005, at Barangay Calangatan, Municipality of San Teodoro, Province of Oriental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority as required under existing forest laws and regulations and for unlawful purpose, conspiring, confederating, and mutually helping one another, did then and there willfully, unlawfully, feloniously and knowingly cut with the use of an unregistered power chainsaw, a Dita tree, a forest product, with an aggregate volume of 500 board feet and with a corresponding value of TWENTY THOUSAND (Php20,000.00), Philippine Currency.
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> CONTRARY TO LAW.[3]

Petitioners were caught *in flagrante delicto* by several police officers and representatives of the Department and Environment and Natural Resources (DENR) who were conducting surveillance operations against illegal loggers in the area. While they admitted that they had no permit to the logging activity, petitioners claim that they are Iraya-Mangyan indigenous peoples (IPs) and, as such, they had the right to cut the tree for the construction of a community toilet of the *Mangyan* community.

The majority opinion, however, reverses the rulings of the courts below and acquits petitioners of the crime. It is opined that the prosecution was unable to prove their guilt beyond reasonable doubt. Ultimately, the majority relies on an "ensuing unfortunate confusion" as to the rights of indigenous peoples insofar as tree-cutting under the law is concerned. While doubtless there was a voluntary and knowing act of cutting, collecting,

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penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

[2] Revised Forestry Code of the Philippines, May 19, 1975.

[3] *Rollo*, p. 57.

or harvesting of timber, it is reasonably doubtful that the act was committed without the requisite State authority.[4]

The view espoused by the majority, however, is a deviation not only from the 1987 Constitution but also from pertinent legislative enactments and established principles in criminal law.

In every criminal case, the guilt of an accused must be proven beyond reasonable doubt. Section 2, Rule 133 of the Rules of Court provides:

> SECTION 2. *Proof beyond reasonable doubt*. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Time and again, the Court has held that "it is a reasonable doubt on the *evidence* presented that will result in an acquittal."[5] Guilt must be founded on the strength of the prosecution's evidence, not on the weakness of the defense. In *People v. Claro*,[6] We ruled that reasonable doubt —

> x x x is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. **It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge**. x x x If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; **but the evidence must establish**

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[4] See *majority opinion*, p. 33.

[5] *Atty. Bernardo T. Constantino v. People of the Philippines*, G.R. No. 225696, April 8, 2019.

[6] 808 Phil. 455, 464-465 (2017). (Emphasis ours)

the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this, and require absolute certainty, it would exclude circumstantial evidence altogether.

Likewise, *Alcantara v. Court of Appeals*[7] states:

x x x **Reasonable doubt is that doubt engendered by an investigation of the whole proof** and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. Absolute certainty of guilt is not required by the law to convict of any crime charged but moral certainty is required and this certainty is required to every proposition of proof requisite to constitute the offense. **The reasonable doubt should necessarily pertain to the facts constituted by the crime charged**. Surmises and conjectures have no place in a judicial inquiry and thus are shunned in criminal prosecution. **For the accused to be acquitted on reasonable doubt, it must arise from the evidence adduced or from lack of evidence.** Reasonable doubt is not such a doubt as any man may start questioning for the sake of a doubt; nor a doubt suggested or surmised without foundation in facts, for it is always possible to question any conclusion derived from the evidence on record. x x x.

Even the majority opinion noted that:

With respect to those of a contrary view, it is difficult to think of a more accurate statement than that which defines reasonable doubt as a doubt for which one can give a reason, **so long as the reason given is logically connected to the evidence**. An inability to give such a reason for the doubt one entertains is the first and most obvious indication that the doubt held may not be reasonable. x x x.

> You will note that the Crown must establish the accused's guilt beyond a "reasonable doubt," not beyond "any doubt." A reasonable doubt is exactly what it says -a doubt based on reason- on the logical processes of the mind. It is not a fanciful or speculative doubt, nor is it a doubt based upon sympathy or prejudice. It is the sort of doubt which, if you ask yourself

[7] 462 Phil. 72, 89-90 (2003).

"why do I doubt?" — you can assign a logical reason by way of an answer.

A logical reason in this context means a reason connected either to the evidence itself, including any conflict you may find exists after considering the evidence as a whole, or to an absence of evidence which in the circumstances of this case you believe is essential to a conviction. x x x.[8]

Accordingly, courts must evaluate the evidence in relation to the elements of the crime charged and, as such, the finding of guilt is *always a question of fact*.[9] Acquittals based on reasonable doubt, being a question of fact, therefore, has nothing to do with the interpretation of pertinent law, but has everything to do with the appreciation of evidence. It has been established that:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[10]

This notwithstanding, the majority acquits petitioners for failure by the prosecution to prove their guilt not based on an insufficiency of evidence but a question of law brought about by an alleged confusion as to the applicability of the law. In support thereof, the majority opinion likened the present case

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[8] See *majority opinion*, p. 8.

[9] *Atty. Bernardo T. Constantino v. People of the Philippines*, *supra* note 5.

[10] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 767 (2013).

with *Saguin, et al. v. People*[11] where We acquitted accused therein who failed to comply with Section 23 of P.D. No. 1752,[12] as amended, by R.A. No. 7742[13] for failing to remit Pag-IBIG contributions of the employees at the hospital they were working at. The facts of said case, however, are not on all fours with the case before Us. In *Saguin*, the accused were charged for violating the following penal provision:

> Section 23. *Penal Provisions*. — **Refusal or failure without lawful cause or with fraudulent intent to comply with** the provisions of this Decree, as well as the implementing rules and regulations adopted by the Board of Trustees, particularly with respect to registration of employees, **collection and remittance of employee savings as well as employer counterparts, or the correct amount due** x x x.

Under the provision cited above, the failure to effect the remittances is punishable when the refusal or failure is: (1) without lawful cause or (2) with fraudulent *intent*. We ruled in *Saguin* that accused persons therein could not be convicted for failing to make remittances of the hospital employees because neither of the two (2) requirements were proven. *First*, We explained that the devolution of the hospital where the accused were working to the provincial government was a lawful cause for their inability to make the remittances. This was due to the fact that said duty to remit was already turned over to said provincial government by virtue of R.A. No. 7160 or the Local Government Code of 1993. Thus:

> By April 1, 1993, however, the RMDH had been devolved to the Provincial or Local Government of Zamboanga del Norte. **Thus, all financial transactions of the hospital were carried out through the Office of the Provincial Governor. The petitioners, therefore, had legal basis to believe that the duty to set aside funds and to effect the HDMF remittances was transferred from the hospital**

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[11] 773 Phil. 614 (2015).

[12] Entitled "*Amending the Act Creating the Home Development Mutual Fund*," December 14, 1980.

[13] Entitled "*An Act Amending Presidential Decree No. 1752, As Amended*," June 17, 1994.

to the provincial government. Hence, the petitioners should not be penalized for their failure to perform a duty which were no longer theirs and over which they were no longer in control.

x x x x

The devolution of the hospital to the provincial government, therefore, was a valid justification which constituted a lawful cause for the inability of the petitioners to make the HDMF remittances for March 1993.[14]

Second, We found that accused persons therein cannot be guilty of having fraudulent intent due to an apparent confusion brought about by the devolution. The Court pertinently provided as follows:

There was no showing either of fraudulent intent or deliberate refusal on the part of the petitioners to make the March 1993 remittance. Whatever lapses attended such non-remittance may be attributed to the confusion of the concerned personnel as to their functions and responsibilities brought about by the advent of the devolution. More important was the honest belief of the petitioners that the remittance function was transferred to, and assumed by, the provincial government. In fact, the petitioners duly informed the Hospital Chief of the need to make representations to the Governor to make such payment.

For said reason, they cannot and should not be faulted for the non-remittance. Further, as aptly averred by petitioners, there was no reason for them to delay or realign the funds intended for remittances because they themselves were prejudiced and affected parties.

It is a general principle in law that in *malum prohibitum* case, good faith or motive is not a defense because the law punishes the prohibited act itself. The penal clause of Section 23 of P.D. No. 1752, as amended, however, punishes the failure to make remittance only when such failure is without lawful cause or with fraudulent intent.

As earlier stated, evidence for fraudulent intent was wanting in this case. In March 1993, the payroll was prepared showing all the amounts deductible from the salaries of the employees including Medicare, loan repayment, withholding taxes, retirement insurance

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[14] *Saguin, et al. v. People*, *supra* note 11.

premium, and Pag-IBIG contributions. In the said payroll, a total amount of P15,818.81 was deducted for the Pag-IBIG loan repayments and a total amount of P7,965.58 was deducted for the Pag-IBIG contributions of all the hospital and rural health employees. The deductions, however, were comingled with the funds of RMDH. The prosecution could not even argue and prove that the petitioners pocketed or misappropriated the deductions.[15]

Thus, We acquitted the accused in *Saguin* for the following reasons: (1) there exists a *lawful cause* for the failure to remit, specifically, the devolution or transfer of the remittance functions from the hospital to the local government as a result of the passage of the Local Government Code; and (2) there is no showing of *fraudulent intent* because failure was actually brought about by a *confusion* caused by the devolution. Clearly, the Court took the resulting confusion into account in order to show an absence of fraudulent intent. But it was never ruled that this confusion was a lawful cause for the failure to remit.

The majority cannot, therefore, correctly rely on *Saguin* to conclude that due to an apparent confusion arising from the recognition of IP rights in the *IPRA*, there is reasonable doubt as to whether petitioners' act of cutting was done without the requisite authority. To repeat, the offense in this case is the cutting of any forest product without any governmental authority. Unlike the offense in *Saguin* where an absence of fraudulent intent acquits, intent of an accused herein is wholly immaterial.

It is an established fact that P.D. No. 705 is a special penal statute that punishes acts essentially *malum prohibitum*. As such, mere commission of the prohibited acts consummates the offense even in the absence of malice or criminal intent.[16] This is the reason why the Court, in *Idanan, et al. v. People*,[17] rejected the defense that the accused were merely following orders to load lumber in their truck. Indeed, it suffices to prove the act

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[15] *Id*. at 628. (Emphasis ours)

[16] *Monge, et al. v. People*, 571 Phil. 472, 481 (2008).

[17] 783 Phil. 429 (2016); cited also in the Dissenting Opinion of Justice Mario V. Lopez.

of cutting or possessing trees or any forest product from any forest land, alienable and disposable public lands, or even private lands, and *without any authority* from the DENR. Owing to the very *mala prohibita* nature of an offense when the doing of an act is prohibited by a special law, the commission of the prohibited act is the crime itself.[18] Accordingly, in prosecutions thereunder, claims of good faith are by no means reliable as defenses because the offense is complete and criminal liability attaches once the prohibited acts are committed.[19]

This notwithstanding, the majority insists on a confusion that springs from the amendments undergone by the subject Section 77 of P.D. No. 705. Specifically, it adopts the arguments of Senior Associate Justice Estela M. Perlas-Bernabe and Associate Justice Alfredo Benjamin S. Caguioa asserting that in light of the evolution and history thereof as well as the changes and amendments it underwent, it can be assumed that the "authority" required by the law has been expanded and is no longer confined to those granted by the DENR. The use of the phrase "any authority" in the law's present wording — without any qualification — ought to be construed plainly and liberally in favor of petitioners.

To illustrate, they narrated that in 1974, P.D. No. 389, or the Forestry Reform Code, was enacted and it pertinently penalized the cutting of timber "without permit from the Director."[20] Then, in 1975, P.D. No. 705 revised the provision

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[18] *Tigoy v. Court of Appeals*, 525 Phil. 613, 624 (2006).

[19] *Monge v. People*, *supra* note 16, at 479.

[20] Section 69 of P.D. No. 389 provides:

SECTION 69. Cutting, Gathering and/or Collection of Timber or Other Products. — The penalty of prision correccional in its medium period and a fine of five (5) times the minimum single forest charge on such timber and other forest products in addition to the confiscation of the same products, machineries, equipments, implements and tools used in the commission of such offense; and the forfeiture of improvements introduced thereon, in favor of the Government, shall be imposed upon any individual, corporation, partnership, or association who shall, **without permit from the Director**, occupy or use or cut, gather, collect, or remove timber or other forest products

to state that any person who shall cut timber from any forest land "without any authority under a license agreement, lease, license or permit," shall be guilty of qualified theft.[21] Subsequently, in 1987, this provision was further amended through Executive Order (E.O.) No. 277, which merely penalized the cutting of timber "without any authority."[22] Pursuant to the foregoing, it is maintained that since the phrase "under a license agreement, lease, license or permit" was removed by E.O. No. 277, the "authority" contemplated in P.D. No. 705, as amended, should no longer be limited to those granted by the DENR. Rather, such authority may also be found in other sources, such as the IPRA.

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from any public forest, proclaimed timberland, municipal or city forest, grazing land, reforestation project, forest reserve of whatever character; alienable or disposable land: Provided, That if the offender is a corporation, partnership or association, the officers thereof shall be liable.

[21] Section 68 of P.D. No. 705 provides:

SECTION 68. *Cutting, Gathering and/or Collecting Timber or Other Products without License*. — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, **without any authority under a license agreement, lease, license or permit**, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; Provided, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

[22] Executive Order No. 277 provides:

Section 68. *Cutting, Gathering and/or Collecting Timber or Other Forest Products without License*. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, **without any authority**, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

The argument, however, tends to mislead. A full and careful examination of E.O. No. 277[23] reveals no showing of any

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[23] EXECUTIVE ORDER NO. 277 is reproduced below:

AMENDING SECTION 68 OF PRESIDENTIAL DECREE (P.D.) NO. 705, AS AMENDED, OTHERWISE KNOWN AS THE REVISED FORESTRY CODE OF THE PHILIPPINES, **FOR THE PURPOSE OF PENALIZING POSSESSION OF TIMBER OR OTHER FOREST PRODUCTS WITHOUT THE LEGAL DOCUMENTS** REQUIRED BY EXISTING FOREST LAWS, **AUTHORIZING THE CONFISCATION OF ILLEGALLY CUT, GATHERED, REMOVED AND POSSESSED FOREST PRODUCTS**, AND **GRANTING REWARDS TO INFORMERS OF VIOLATIONS OF FORESTRY LAWS**, RULES AND REGULATIONS.

WHEREAS, there is an urgency to conserve the remaining forest resources of the country for the benefit and welfare of the present and future generations of Filipinos;

WHEREAS, our forest resources may be effectively conserved and protected through the vigilant enforcement and implementation of our forestry laws, rules and regulations;

WHEREAS, the implementation of our forest laws suffers from technical difficulties, due to certain inadequacies in the penal provisions of the Revised Forestry Code of the Philippines; and

WHEREAS, to overcome these difficulties, there is a need to penalize certain acts to make our forestry laws more responsive to present situations and realities;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order:

SECTION 1. Section 68 of Presidential Decree (P.D.) No. 705, as amended, is hereby amended to read as follows:

"SEC. 68. *Cutting, Gathering and/or Collecting Timber or Other Forest Products* ***Without License.*** — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: *Provided*, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

"The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed, as well as the machinery, equipment, implements and tools illegally

intention, express or implied, to forego the requirements of authority under a license agreement, lease, license or permit. For one, a proper reading of its title clearly reveals that E.O. No. 277's purposes are limited only to: (1) *penalize possession* of timber or other forest products without the legal documents required by existing forest laws; (2) *authorize the confiscation* of illegally cut, gathered, removed and possessed forest products; and (3) *grant rewards* to informers of violations of forestry laws, rules and regulations. For another, the title of subject Section 68 (now Section 77) explicitly states: "Section 68. Cutting, Gathering and/or Collecting Timber or Other Forest Products *without License*." Thus, the view that E.O. No. 277 removed from Section 77 of P.D. No. 705 the requirements of licenses and permits so as to allow other forms of "authority" and sources other than the DENR cannot be permitted. The

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used in the area where the timber or forest products are found."

SECTION 2. Presidential Decree No. 705, as amended, is hereby further amended by adding Sections 68-A and 68-B which shall read as follows:

"SEC. 68-A. *Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation*. — In all cases of violations of this Code or other forest laws, rules and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter.

"SEC. 68-B. *Rewards to Informants*. — Any person who shall provide any information leading to the apprehension and conviction of any offender for any violation of this Code or other forest laws, rules and regulations, or confiscation of forest products shall be given a reward in the amount of twenty *per centum* (20%) of the proceeds of the confiscated forest products."

SECTION 3. All laws, orders, issuances, rules and regulations or parts thereof inconsistent with this Executive Order are hereby repealed or modified accordingly.

SECTION 4. This Executive Order shall take effect after fifteen days following its publication either in the *Official Gazette* or in a newspaper of general circulation in the Philippines.

DONE in the City of Manila, this 25th day of July, in the year of Our Lord, Nineteen Hundred and Eighty-Seven.

Published in the Official Gazette, Vol. 83, No. 31, 3528-112 Supp., on August 3, 1987.

law could not be any clearer. As such, it may not be construed any way other than its plain and simple wording.

Contrary to such assertion, moreover, and even assuming that confusion in the law can result in acquittal, there simply is no such confusion in this particular case. Both the Legislature and the Executive have consistently applied a strict approach towards environmental regulation as clearly evident from a historical account of their enactments.

Even before the passage of P.D. No. 705, Congress, in *1963*, had already imposed the penalty of imprisonment by virtue of R.A. No. 3571[24] on any person who cuts trees in plazas, parks, school premises or in any other public ground without government approval.

In *1974* and *1975*, then President Ferdinand E. Marcos issued P.D. No. 389 and the subject P.D. No. 705, respectively, similarly penalizing the cutting of timber without permit.

In *1976*, President Marcos again promulgated P.D. No. 953,[25] which amended R.A. No. 3571, prohibiting the unauthorized cutting of trees along public roads, in plazas, parks other than national parks, school premises or in any other public ground or place, or on banks of rivers or creeks, or along roads in land subdivisions or areas therein. The decree also imposed on concerned persons the duty of planting trees in specified places.

In *1981*, President Marcos next signed Presidential Proclamation No. 2146[26] declaring certain areas as

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[24] *An Act to Prohibit the Cutting, Destroying or Injuring of Planted or Growing Trees, Flowering Plants and Shrubs or Plants of Scenic Value Along Public Roads, in Plazas, Parks, School Premises or in Any Other Public Pleasure Ground.*

[25] *Requiring the Planting of Trees in Certain Places and Penalizing Unauthorized Cutting, Destruction, Damaging and Injuring of Certain Trees, Plants and Vegetation.*

[26] *Proclaiming Certain Areas and Types of Projects as Environmentally Critical and within the Scope of the Environmental Impact Statement System Established under Presidential Decree No. 1586.*

environmentally critical within the scope of the Environmental Impact System under P.D. No. 1586.[27] Said issuances provide that no person may conduct any environmentally critical project (such as logging)[28] in any environmentally critical area (such as those traditionally occupied by cultural communities or tribes)[29] without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.[30]

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[27] *Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and for Other Purposes (1978).*

[28] Presidential Proclamation No. 2146 provides:

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, hereby proclaim the following areas and types of projects as environmentally critical and within the scope of the Environmental Impact Statement System;

A. Environmentally Critical Projects

x x x x

II. Resource Extractive Industries

a. Major mining and quarrying projects

b. Forestry projects

1. Logging

xxxx (Emphasis ours)

[29] Presidential Proclamation No. 2146 provides:

B. Environmentally Critical Areas

xxxx (Emphasis ours)

5. Areas which are traditionally occupied by cultural communities or tribes;

[30] Section 4 of P.D. No. 1586 provides:

Section 4. Presidential Proclamation of Environmentally Critical Areas and Projects. — The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. **No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative**. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

In *1987*, then President Corazon C. Aquino, circulated E.O. No. 277, which amended P.D. No. 705 and penalized the mere possession of timber without the requisite legal documents. As discussed above, moreover, E.O. No. 277 retained the permit requirement under P.D. No. 705.

In *1990*, the DENR, in Administrative Order (AO) No. 79, Series of 1990, similarly maintained the authorization requirement on the harvesting, transporting, and sale of firewood, pulpwood or timber planted in private lands in the form of a certificate from the Community Environment and Natural Resources Office (CENRO).[31]

In *1992*, Congress enacted R.A. No. 7586,[32] otherwise known as the "National Integrated Protected Areas System (NIPAS) Act of 1992," which prohibited the hunting, destroying, disturbing, or mere possession of any plants or animals or

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[31] In *People v. Dator*, 398 Phil. 109, 121-122 (2000), the Court held that:

"The appellant cannot validly take refuge under the pertinent provision of DENR Administrative Order No. 79, Series of 199025 which prescribes rules on the deregulation of the harvesting, transporting and sale of firewood, pulpwood or timber planted in private lands. Appellant submits that under the said DENR Administrative Order No. 79, no permit is required in the cutting of planted trees within titled lands except Benguet pine and premium species listed under DENR Administrative Order No. 78, Series of 1987, namely: narra, molave, dao, kamagong, ipil, acacia, akle, apanit, banuyo, batikuling, betis, bolong-eta, kalantas, lanete, lumbayao, sangilo, supa, teak, tindalo and manggis.

Concededly, the varieties of lumber for which the appellant is being held liable for illegal possession do not belong to the premium species enumerated under DENR Administrative Order No. 78, Series of 1987. However, under the same DENR administrative order, a certification from the CENRO concerned to the effect that the forest products came from a titled land or tax declared alienable and disposable land must still be secured to accompany the shipment. This the appellant failed to do, thus, he is criminally liable under Section 68 of Presidential Decree No. 705 necessitating prior acquisition of permit and "legal documents as required under existing forest laws and regulations." (Emphasis ours)

[32] *An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for Other Purposes*.

products derived from protected areas without a permit from the Management Board.

In *1995*, then President Fidel V. Ramos executed E.O. No. 263[33] adopting a Community-Based Forest Management to ensure the sustainable development of the country's forestland resources. It stated that participating communities, including IPs, may be granted access to forestland resources provided they employ sustainable harvesting methods duly approved by the DENR.

In *2000*, the DENR issued AO No. 2000-21[34] which provided that "no person, association or corporation shall cut, gather, transport, dispose and/or utilize naturally grown trees or parts thereof or planted premium tree species, inside titled private lands unless authorized to do so under a Private Land Timber Permit/Special Private Land Timber Permit issued by the Secretary, DENR or his/her authorized representative."

In *2004*, the DENR issued AO No. 2004-52 maintaining the permit requirement for the cutting, gathering, and utilization of naturally grown trees in private lands, regardless of species.

In *2008*, the DENR issued AO No. 2008-26, or the Revised Implementing Rules and Regulations (IRR) of the NIPAS Act of 1992. It allows the issuance of cutting permits in favor of IPs provided certain requirements are first complied with.[35]

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[33] *Adopting Community-Based Forest Management as the National Strategy to Ensure the Sustainable Development of the Country's Forestlands Resources and Providing Mechanisms for its Implementation*.

[34] Revised Guidelines in the Issuance of Private Land Timber Permit/ Special Private Land Timber Permit (PLTP/SPLTP).

[35] Rules 11.7. and 11.7.4 of DENR AO No. 2008-26 provide:

Rule 11.7. The PASu shall be primarily accountable to the PAMB and the DENR for the implementation of the Management Plan and operations of the protected area. He/she shall have the following specific duties and responsibilities:

x x x x

11.7.4 Issue cutting permit for planted trees for a volume of up to five (5) cubic meters per applicant per year for traditional and subsistence uses

Also in *2008*, the DENR, together with the National Commission on Indigenous Peoples (NCIP), issued DENR-NCIP Joint AO No. 2008-01 which recognized the traditional forest practices of IPs and allowed them to implement the same within their ancestral domains. The joint order nevertheless upheld the permit requirement in providing that "only those ICCs/IPs with registered Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) shall be issued with forest resource utilization permit."

In *2011*, then President Benigno Simeon C. Aquino III signed E.O. No. 23 into law declaring a moratorium on the cutting and harvesting of timber in the natural and residual forests in recognition of the destructive effects of the La Niña phenomenon. As such, the DENR was prohibited from issuing/renewing tree cutting permits in all natural and residual forests nationwide, save for certain exceptions. The order, likewise, stated that "tree cutting associated with cultural practices pursuant to the IPRA may be allowed only subject to strict compliance with existing guidelines of the DENR."

In *2013*, the DENR issued Memorandum 2013-74 clarifying the suspension on the processing of all request for cutting permits. It essentially permitted tree-cutting activities within private lands and public forests/timberlands, including those IP practices allowed by E.O. No. 23 under the IPRA, subject to strict clearance and permit requirements to be issued by appropriate officials from the Office of the President and the DENR.

In *2018*, Congress passed R.A. No. 110038, otherwise known as the Expanded National Integrated Protected Areas System (ENIPAS) Act of 2018, which amended the NIPAS Act of 1992. Just like the NIPAS Act of 1992 and its IRR, the IRR of the

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by ICCs/IPs and tenured migrants only. Provided, that PACBRMA holders with affirmed Community Resource Management Plan (CRMP) shall no longer be issued cutting permits. Provided further, that the total volume of extraction does not exceed the limit set by the PAMB and the location of extraction is within the appropriate site within the multiple use zone.

ENIPAS Act of 2018 allows the issuance of cutting permits in favor of IPs provided certain requirements are complied with.[36]

Clearly, there is nothing in the law, old or new, that would suggest any government intent to relinquish regulatory rights in favor of IPs, or anyone for that matter. At no point in time was the authorization requirement ever dispensed with. Whether it be in the form of permits, licenses, or such other joint agreements, the Executive and the Legislature had every intention to maintain its unwavering regulation of the country's forests and natural resources thereon.

As a matter of fact, the DENR, together with the NCIP, had already effectively harmonized these interests found in the provisions of P.D. No. 705 and the IPRA when it issued DENR-NCIP Joint AO No. 2008-01.[37] By virtue of the joint order, the

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[36] DENR AO No. 2019-05 provides:

Rule 11-B.3 In addition to the functions enumerated in Section 11-B, the PASU shall perform the following duties and responsibilities:

x x x x

d. **Recommend actions for cutting permit for planted trees solely for the traditional and subsistence uses by ICCs/IPs** and tenured migrants, **of up to five (5) cubic meters per applicant per year**. Provided, that, PACBRMA holders with affirmed Community-Based Resource Management Plan shall no longer be issued cutting permits. Provided, further, that **the total volume cut shall not exceed the limits set by the PAMB**, and that the location of the cutting is within the appropriate site **within the Multiple Use Zone**; (Emphases ours)

[37] The pertinent provisions of DENR-NCIP Joint AO No. 2008-01 state:

Pursuant to the provisions of the 1987 Constitution, Presidential Decree (PD) No. 705, as amended, Executive Order (EO) No. 192, Series of 1987, Republic Act (RA) No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997 and its Implementing Rules and Regulations NCIP Administrative Order No. 1, Series of 1998, DENR-NCIP Memorandum Circular No. 2003-01, EO No. 318, Series of 2004, in deference to the forest resources management systems and practices of the Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs) that should be recognized, promoted and protected, the guidelines and procedures as provided for in this Order shall be strictly observed.

Section 2. Objectives. — For the effective implementation of this Order, the following objectives shall serve as guides:

State duly recognized the inherent right of IPs to self-governance as well as their contribution to the conservation of the country's environment and natural resources, ensuring equitable sharing benefits thereof.

2.1. General Objectives: The DENR and NCIP shall:

a. **Jointly undertake the recognition**, documentation, registration and confirmation of the **Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) of ICCs/IPs** found to be sustainable, which have either been established and/or effectively managed by families, clans and communities as part of their **cultural practices and traditions** as well as the role of indigenous socio-cultural and socio-political institutions in this endeavour;

b. **Adhere to the customary laws and recognize the Indigenous Knowledge Systems and Practices (IKSP) of the ICCs/IPs together with the intellectual property rights thereon, if any, in accordance with the applicable provisions of the IPRA**;

c. **Recognize the ICCs/IPs' preferential rights to benefit from the natural resources found within their ancestral lands/domains** jointly documented and confirmed pursuant to this Order;

d. **Institutionalize** the traditional and culture-driven sustainable forest resources management systems and practices, policies and **customary laws of the ICCs/IPs**; and

x x x x

2.2. Specific Objectives:

a. To **institutionalize** the consultative, collaborative effort and consensus building processes between **and among indigenous socio-political institutions including its leadership system, local government units (LGUs), the DENR, the NCIP and other concerned agencies**. x x x

Sec. 3. Coverage. — **This Order shall cover and apply to all ICCs/IPs with traditional indigenous forest resources management systems and practices within their ancestral domains/lands**, whether it be individual, family, clan and communal.

x x x x

Sec. 6. **Recognition of Indigenous and Traditionally Managed Forests Systems and Practices. — All existing indigenous and traditionally managed forest systems and practices that were initially and jointly documented and verified by Regional Offices of the DENR and the NCIP** to be promoting and practicing forest and biodiversity conservation, forest protection and sensible utilization of the resources found therein based on existing customary laws and duly endorsed by the LGUs concerned through Resolution or Ordinance **shall be issued a Joint Confirmation and Recognition Order (JCRO)** by the respective DENR-Regional Executive Director (RED) and the NCIP Regional Director (RD).

Evidently, a reasonable balance between IP rights under the IPRA and protection of forest resources under P.D. No. 705 is

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However, issuance of any utilization permit by the DENR for the resources found therein shall be held in abeyance pending the signing of a Memorandum of Agreement (MOA) between and among the DENR, the NCIP, the ICCs/IPs, socio-political structures and LGUs — Barangay, Municipal and Provincial level x x x

Finally, validly existing resources utilization permits duly issued by the DENR to the ICCs/IPs prior to this Order shall continue to be respected until its expiration or until the allowable volume has been fully consumed or the harvesting in the allowable area has been finished, whichever comes first.

Sec. 7. Formulation of a MOA and the JIRR. — **The Memorandum of Agreement (MOA) shall contain, among others, the commitment of all concerned signatories to the sustainable management of the subject forest area and its forest resources, the procedures to be followed in the operationalization of the traditional and indigenous forest management systems and practices consistent with the traditions and culture therein** including the corresponding penalties and sanctions to be imposed for each and every violation to be committed. Said MOA shall also include provisions on the roles and responsibilities of all parties in the documentation of information and/or in the gathering of primary data for the recognition and confirmation of the traditional and indigenous forest management systems and practices.

x x x x

Sec. 9. Registration. — **Registration of the indigenous and traditionally managed forest as a result of the comprehensive evaluation, documentation and consultation activities found to be practicing a sustainable forest resources management system and practice shall be issued with a Joint Implementing Rules and Regulations (JIRR) jointly approved by the DENR, the NCIP** and all parties mentioned in Section 6 hereof. The presence of **the following factors**/conditions which in all cases **shall be considered** in the registration:

9.1. The **existing Indigenous Forest Resources Management Systems/Practices** is promoting forest conservation, protection, utilization and biodiversity conservation;

x x x x

9.3. The presence of **customary laws**, if verified to be within the framework of sustainable forest resources management; x x x x

9.4. The watershed forest management shall be the ecosystem management units and being managed in a holistic, scientific rights-based, technology-based and **community-based manner** and observing the principles of multiple use, **decentralization** and devolution actively participated by the Local Government Units (LGUs) and other concerned agencies with synergism

already in place. Pursuant to the joint order above, the State expressly recognizes and adheres to the Sustainable Traditional and Indigenous Forest Resources Management Systems and

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of the economic, ecological, **social and cultural objectives**, and the rational utilization of all forest resources found therein;

9.5. The **security of land tenure and land use rights** as provided for under the IPRA and other applicable ENR laws, rules and regulations shall be a requirement for sustainable use; and

9.6. The current indigenous forest resources management systems/practices can be **harmonized** with current ENR laws, rules and regulations.

x x x x

Sec. 10. Resources Management and Sustainability. — **Resource management within registered traditionally-managed forests shall be strictly in adherence to the established traditional leadership structure and practices.** A resource management plan shall be prepared and institutionalized relative to the identified ancestral management units/blocks by the community underscoring collective agreements and commitments on natural resource protection, conservation and utilization. **However, for purposes of ensuring sustainability and control, any resource utilization set by the communities shall be documented.** All concerned entities (DENR, NCIP, and LGU) shall be informed accordingly for purposes of monitoring and transparency. The following principles shall be observed in resources utilization:

10.1. **Only those ICCs/IPs with registered STIFRMSP shall be issued with forest resource utilization permit.**

10.2. **That any resource utilization in the form of timber or non-timber shall be replaced by the user with an equivalent number of tree seedlings** or similar customary arrangement, and as imposed by the community in accordance with its policies and sustainable customs and practices;

10.3. That the existing land use as a traditionally managed forest especially for watershed protection shall be regulated and **extraction of resources shall be allowed only in areas identified by the community as production site**. However, utilization within the areas shall be allowed subject to the provisions of the approved Ancestral Domain Sustainable Development and Protection Plan (ADSDPP);

10.4. The **resource extraction shall be in accordance with existing traditional resource rights defined by the community in its indigenous system and practice.** All DENR laws, rules and guidelines on resource utilization shall be applicable in a supplementary manner;

10.5. The resources extracted for utilization or to be traded outside the domain/locality by the concerned ICC/IP shall be regulated. The disposition of timber and non-timber products shall be governed by the applicable DENR laws, rules and regulations relative to the requisite shipping/transport documents;

Practices (STIFRMSP) of IPs as well as their Indigenous Knowledge Systems and Practices (IKSP) under their customary laws. Said order mandates all concerned stakeholders consisting of the IPs, the DENR, NCIP, Local Government Units (LGUs) to come into an agreement which shall explicitly employ these customary IP practices consistent with their own traditions and cultures to govern their resource utilization within subject forest areas. It is after a rigorous and comprehensive process of consultation and dialogue between and among the parties that the DENR shall issue a forest resource utilization permit upon registration of their STIFRMSP as well as the Joint Implementing Rules and Regulations aimed not only at institutionalizing indigenous and traditionally managed forest practices but, at the same time, utilizing said practices for the protection of the natural resources found in managed forest lands.

Under the present legal framework, then, IPs are actually not prevented from implementing their customary practices, as the majority opinion suggests. Quite the contrary, and by express provision of the joint order, resource management within registered traditionally-managed forests are strictly in adherence to established traditional leadership structure and practices. Unlike the majority's assertions, therefore, the case before Us does not have to be one where a statute such as the IPRA is given preferred application at the expense of P.D. No. 705 especially since reconciliation is achievable to give force and effect to both. The DENR-NCIP Joint AO No. 2008-01 duly accomplishes, this end.

10.6. Resources utilization from naturally grown forests for livelihood projects as carving, handicrafts, manufacturing, etc., shall be regulated and **only** the **allowable volume/number** of species needed as raw materials for livelihood projects could be disposed of outside the domain/locality in accordance with existing traditional resource rights and DENR laws, rules and regulations; and

10.7. Resources harvested from the established indigenous forest/forest plantation to be further processed into finished products (i.e., carving, ornamental, handicrafts, novelty items, etc.), shall be allowed to be transported outside the point of origin to any market outlets subject to DENR laws, rules and regulations. (Emphases ours)

It bears stressing that nowhere in P.D. No. 705 was it provided that IPs are absolutely prohibited from cutting any and all trees found within ancestral domains. The law merely requires them to obtain the necessary permit prior to the cutting. In turn, nowhere in the IPRA was it declared that IPs shall enjoy an unbridled right to log subject to no limitation under existing laws. It can hardly be said, therefore, that the requirements imposed by P.D. No. 705 are contrary to the objectives of the IPRA in the recognition of IPs rights. On the contrary, the two are actually complementary of each other.

In *Lim v. Gamosa*,[38] for instance, We refrained from declaring that the IPRA must prevail over Batas Pambansa Bilang (B.P.) 129 in the absence of an unequivocal expression of the will of the Congress. There, We held that there is no clear, irreconcilable conflict between the IPRA, which merely granted the NCIP jurisdiction over all claims of IPs without restricting words such as "primary" or "exclusive," and B.P. 129 which granted RTCs exclusive, original jurisdiction over similar IP claims. Well settled is the rule that implied repeals are often disfavoured. As much as possible, effect must be given to all enactments of the legislature for otherwise, laws will always remain doubtful.[39]

It must be noted, too, that interpreting the meaning of "authority" in such a way that excludes IPs from the coverage of Section 77 is tantamount to *judicial legislation*. This is because there simply is no legislative intent to that effect. In *Corpuz v. People*,[40] the Court was similarly faced with a question of the continued validity of the penalties imposed by the RPC on crimes against property pegged at values during the time of its enactment in 1930. We, however, refrained from modifying this range, for to do so would be to commit judicial legislation. Thus, apart from the recognition that the Court is ill-equipped and lacks the resources to arrive at a more accurate assessment of the IP

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[38] 774 Phil. 31 (2015).

[39] *Penera v. Commission on Elections*, 615 Phil. 667, 718 (2009); and *De Lima v. Guerrero*, 819 Phil. 616, 1211 (2017).

[40] 734 Phil. 353 (2014).

rights *vis-à-vis* natural resources, We should not usurp Congress' inherent powers of enacting laws.[41]

This, however, does not leave the Court without a remedy. On the basis of Article 5[42] of the RPC, We held in *Corpuz* that the proper course of action is not to suspend the execution of the sentence but to submit, instead, to the Chief Executive the reasons why the Court considers the said penalty to be non-commensurate with the act committed. In the past, We even went as far as imposing the death penalty without impeding its imposition on the ground of "cruelty."

In the same vein, should the Court, in this case, unanimously find that the penalty of imprisonment imposed upon an IP for cutting a tree be excessive or harsh, the Court may very well recommend the matter to the Chief Executive or even Congress for amendment or modification. Suffice it to say, though, that the prohibition of cruel and unusual punishments applies not so much to fine and imprisonment, but to punishments which public sentiment has regarded as cruel or obsolete, for instance, those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like.[43] But even if We consider such penalty as cruel punishment, imposing a different one on the ground of invalidity amounts

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[41] *Id*. at 425.

[42] ART. 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties*. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense. (Emphasis ours)

[43] *Corpuz v. People*, *supra* note 40, at 419.

to a collateral attack on the subject law that must be thwarted for being violative of due process.

This notwithstanding, Justice Caguioa presumes that the lands enumerated in Section 77 of P.D. No. 705 do not include ancestral domains and, as such, petitioners may not be found guilty of violating the same. According to him, ancestral domains are distinct from public or private lands, and any cutting of timber or forest product therein was not contemplated by Section 77.

I, however, respectfully disagree. On the contrary, lands possessed by IPs undoubtedly fall within the statute's definition of private lands. Section 77 penalizes the unauthorized removal of timber or other forest products from any forest land,[44] or timber from alienable and disposable public lands,[45] or from private lands.[46] But as can be drawn from the definition of private lands under Section 3 (mm) of P.D. No. 705, ancestral domains and lands clearly fall under the category of *private land*.

Nevertheless, Justice Caguioa insists that ancestral domains of IPs are a unique kind of property that are neither public nor private, ownership of which springs not from the State but by virtue of "native title." In support of his contention, he cites several legal bases. First, he alludes to the concept of "native title" that can be traced back to the 1909 case of *Cariño v. Insular Government*[47] where the United States Supreme Court

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[44] Section 3 (d) of P.D. No. 705 states that forest lands include the public forest, the permanent forest or forest reserves, and forest reservations.

[45] Section 3 (c) of P.D. No. 705 provides that alienable and disposable lands refer to those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes.

[46] Section 3 (mm) of P.D. No. 705 indirectly pertains to private land in stating that private right means or refers to titled rights of ownership under existing laws, and in the case of primitive tribes, to rights of possession existing at the time a license is granted under this Code, which possession may include places of abode and worship, burial grounds, and old clearings, but excludes production forest inclusive of logged-over areas, commercial forests and established plantations of forest trees and trees of economic value.

[47] 41 Phil. 935, 944 (1907).

upheld the IP claim of private ownership that "will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land." Then, he identifies Our ruling in *Republic v. Cosalan*[48] where We basically upheld the doctrine enunciated in *Cariño*. Finally, Justice Caguioa ends his conclusion by citing the Separate Opinion of former Chief Justice Reynato S. Puno in *Cruz v. Secretary of Environment and Natural Resources*[49] which discussed the view that ancestral domains are IPs' private but community property and that "it is private merely because it is not part of the public domain." Thus, on the basis thereof, Justice Caguioa concludes that since ancestral domains are neither public nor private, the cutting of timber and forest products thereon cannot be penalized under Section 77 of P.D. No. 705.

Such interpretation, however, runs contrary to the very sources it aims to elucidate. A more circumspect reading of these sources indicates, simply, that ancestral domains and lands *are not public lands*. This must be the true and actual import of said authorities for they do not go on to deduce that said domains are *not private lands*. On the contrary, a more prudent analysis of the same strengthens the finding that ancestral domains are, in fact, private in character.

In *Cruz*, former Chief Justice Puno expressly opined that ancestral domains and ancestral lands are the private property of indigenous peoples and do not constitute part of the land of the public domain.[50] Even Justice Santiago M. Kapunan's

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[48] G.R. No. 216999, July 4, 2018. Third Division, penned by Associate Justice Alexander G. Gesmundo, with Associate Justice Marvic Mario Victor F. Leonen, and then Associate Justices Presbitero J. Velasco, Lucas P. Bersamin, Samuel R. Martires, concurring.

[49] 400 Phil. 904, 995 (2000).

[50] Former Chief Justice Puno stated in *Cruz*:

Native title refers to ICCs/IPs' preconquest rights to lands and domains held under a claim of private ownership as far back as memory reaches. These lands are deemed never to have been public lands and are indisputably presumed to have been held that way since before the Spanish Conquest. x x x

Separate Opinion supports the conclusion that ancestral lands and domains are considered private lands which are not part of the public domain.[51] In fact, Justice Kapunan further found it

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Like a torrens title, ***a CADT is evidence of private ownership of land* by native title. Native *title, however, is a right of private ownership peculiarly granted to ICCs/IPs over their ancestral lands and domains*.** The IPRA categorically declares ancestral lands and domains held by native title as never to have been public land. ***Domains and lands held under native title are, therefore, indisputably presumed to have never been public lands and are private.***

x x x x

In the Philippines, the concept of native title first upheld in Cariño and enshrined in the IPRA grants ownership, albeit in limited form, of the land to the ICCs/IPs. Native title presumes that the land is private and was never public. Cariño is the only case that specifically and categorically recognizes native title. The long line of cases citing Cariño did not touch on native title and the private character of ancestral domains and lands.

x x x x

The private character of ancestral lands and domains as laid down in the IPRA is further strengthened by the option given to individual ICCs/IPs over their individually-owned ancestral lands. For purposes of registration under the Public Land Act and the Land Registration Act, the IPRA expressly converts ancestral land into public agricultural land which may be disposed of by the State. ***The necessary implication is that ancestral land is private.*** It, however, has to be first converted to public agricultural land simply for registration purposes.

x x x x

Thus, ancestral lands and ancestral domains are not part of the lands of the public domain. They are private and belong to the ICC/IPs. (*Cruz v. Secretary of Environment and Natural Resources*, *supra* note 49, at 460-472. (Emphasis ours; citations and italics omitted)

[51] Justice Kapunan stated in *Cruz*:

The Regalian theory, however, does not negate native title to lands held in private ownership since time immemorial. In the landmark case of *Cariño vs. Insular Government the United States Supreme Court*, reversing the decision of the pre-war Philippine Supreme Court, made the following pronouncement: . . . x x x **A proper reading of Cariño would show that the doctrine enunciated therein applies only to lands which have always been considered as private, and not to lands of the public domain, whether alienable or otherwise.** A distinction must be made between ownership of land under native title and ownership by acquisitive prescription against the State. Ownership by virtue a of native title presupposes that the land has been held by its possessor and his predecessors-in-interest in the concept

readily apparent from the constitutional records that "the framers of the Constitution did not intend Congress to decide whether ancestral domains shall be public or private property." Rather, they acknowledged that "ancestral domains shall be treated as private property, and that customary laws shall merely determine whether such private ownership is by the entire indigenous cultural community, or by individuals, families, or clans within the community."[52]

But even granting that the ancestral domains are neither public nor private, the same still cannot be interpreted to mean that these domains are consequently outside the coverage of P.D. No. 705. Again, nowhere in the authorities cited by Justice Caguioa was it suggested that due to the "unique" character of ancestral domains, the prohibited acts committed are exempt from prosecution under the decree.

One cannot mistake the discussion in *Cruz* to be more than a mere characterization of ancestral domains vis-à-vis the traditional concepts of public and private lands, with the objective of tracing the source of IPs' ancestral ownership. It only distinguished such ancestral lands from lands of public domain and in fact, likened the same to lands held in private ownership.

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of an owner since time immemorial. The land is not acquired from the State, that is, Spain or its successors-in-interest, the United States and the Philippine Government. **There has been no transfer of title from the State as the land has been regarded as private in character as far back as memory goes.** In contrast, ownership of land by acquisitive prescription against the State involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person. Since native title assumes that the property covered by it is private land and is deemed never to have been part of the public domain, the Solicitor General's thesis that native title under Cariño applies only to lands of the public domain is erroneous. Consequently, the classification of lands of the public domain into agricultural, forest or timber, mineral lands, and national parks under the Constitution is irrelevant to the application of the Cariño doctrine because the Regalian doctrine which vests in the State ownership of lands of the public domain does not cover ancestral lands and ancestral domains. (*Id*. at 1044-1046; Emphases ours)

[52] *Cruz v. Secretary of Environment and Natural Resources*, *supra* note 49, at 1054-1955.

Nothing more. Thus, in the absence of any indication that these jurisprudential teachings meant to exempt such domains from the penal provisions of P.D. No. 705, We must refrain from making interpretations that are unintended by the proponents thereof. For purposes of the classification under P.D. No. 705, therefore, ancestral lands and domains undoubtedly fall within the ambit of "private lands."

At this juncture, it must nevertheless be stressed that however way we characterize ancestral domains, the trees, timber, forest products, and all other natural resources found thereon are still, and have always been, owned by the People, as represented by the State. Recently, the Court, in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources (DENR)*,[53] expressly acknowledged the following Section 2, Article XII of the 1987 Constitution as the embodiment of *jura regalia*, or the Regalian doctrine, which reserves to the State the authority over all natural resources:

> **All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.** With the exception of agricultural lands, **all other natural resources shall not he alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.[54]

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[53] G.R. Nos. 202897, 206823 & 207969, August 6, 2019.

[54] *Id*. (Emphasis ours)

Maynilad bore emphasis on the State's role over the nation's natural resources as having a duty to regulate the same in the context of, and with due regard for, public interest. For the People, the State shall protect, foster, promote, preserve, and control the natural resources of the People.[55]

In fact, it is clear from the deliberations of the bicameral conference committee that the IPRA is not intended to bestow ownership over natural resources to the IPs:

> CHAIRMAN FLAVIER. Accepted. Section 8 126 rights to ancestral domain, this is where we transferred the other provision but here itself —
>
> HON. DOMINGUEZ. Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, **we have decided to remove the provisions on natural resources because we all agree that belongs to the State.** Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras. So, if there could be, if our lawyers or the secretariat could just propose a provision for incorporation here so that maybe the right to consultation and the right to be compensated when there are damages within their ancestral lands.[56]

Hence, even when former Chief Justice Puno found basis to believe that ancestral domains do not belong to the public domain, he nevertheless categorically declared that the IP right does not extend to the natural resources thereon.[57] In line with this, Justice Kapunan similarly declared that neither Section

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[55] *Id*.

[56] See Separate Opinion of Justice Kapunan in *Cruz v. Secretary of Environment and Natural Resources*, *supra* note 49, at 1064.

[57] Former Chief Justice Puno stated:

> Sections 7 (a), 7 (b) and 57 of the IPRA do not violate the regalian doctrine enshrined in Section 2, Article XII of the 1987 Constitution.

3 (a)[58] nor Section 7 (a)[59] and (b)[60] of the IPRA make mention of any right of ownership of IPs over natural resources. On the one hand, the former merely defines the coverage, extent,

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Examining the IPRA, there is nothing in the law that grants to the ICCs/IPs ownership over the natural resources within their ancestral domains. The right of ICCs/IPs in their ancestral domains includes ownership, but this "ownership" is expressly defined and limited in Section 7 (a). The ICCs/IPs are given the right to claim ownership over "lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." It will be noted that this enumeration does not mention bodies of water not occupied by the ICCs/IPs, minerals, coal, wildlife, flora and fauna in the traditional hunting grounds, fish in the traditional fishing grounds, forests or timber in the sacred places, etc. and all other natural resources found within the ancestral domains. **Indeed, the right of ownership under Section 7 (a) does not cover** "waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, **forests or timber**, wildlife, flora and fauna and all other natural resources" enumerated in Section 2, Article XII of the 1987 Constitution — as belonging to the State. **The non-inclusion of ownership by the ICCs/IPs over the natural resources in Section 7 (a) complies with the Regalian doctrine.** The large-scale utilization of natural resources in Section 57 of the IPRA is allowed under paragraphs 1 and 4, Section 2, Article XII of the 1987 Constitution. Section 57 of the IPRA does not give the ICCs/IPs the right to "manage and conserve" the natural resources. **Instead, the law only grants the ICCs/IPs "priority rights" in the development or exploitation thereof. Priority means giving preference. Having priority rights over the natural resources does not necessarily mean ownership rights. The grant of priority rights implies that there is a superior entity that owns these resources and this entity has the power to grant preferential rights over the resources to whosoever itself chooses. Section 57 is not a repudiation of the Regalian doctrine. Rather, it is an affirmation of the said doctrine that all natural resources found within the ancestral domains belong to the State.** It incorporates by implication the Regalian doctrine, hence, requires that the provision be read in the light of Section 2, Article XII of the 1987 Constitution. (*Cruz v. Secretary of Environment and Natural Resources*, *supra* note 49, at 933-1010.)

[58] SECTION 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean:

a) *Ancestral Domains.* — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by

and limit of ancestral domains. On the other hand, the latter merely recognizes the "right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." But these provisions do not confer or recognize any right of ownership over the natural resources. Their purpose is definitional and not declarative of a right or title.[61]

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force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

[59] SECTION 7. *Rights to Ancestral Domains*. — The rights of ownership and possession of ICCs/IPs to their ancestral domains shall be recognized and protected. Such rights shall include:

a) *Right of Ownership*. — The right to claim ownership over lands, bodies of water traditionally and actually occupied by ICCs/IPs, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains;

[60] b) *Right to Develop Lands and Natural Resources*. — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they may sustain as a result of the project; and the right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights;

[61] *Cruz v. Secretary of Environment and Natural Resources*, *supra* note 49, at 1062.

In view of the foregoing, the Court, speaking through Justice Kapunan, held in *Cruz* that certain areas claimed as ancestral domains may still be under the administration of other agencies of the government such as the DENR with respect to timber, forest, and mineral lands. While these areas may be certified as ancestral domains under the IPRA, the jurisdiction of government agencies over the natural resources thereon does not terminate for the government is mandated by law to administer the natural resources for the State. To construe the IPRA as divesting the State of jurisdiction over the natural resources within the ancestral domains would be inconsistent with the established doctrine that all natural resources are owned by the State, for the People.[62]

As a matter of fact, the Court, in *Philippine Economic Zone Authority (PEZA) v. Carantes*,[63] had occasion to uphold this concept of State administration over ancestral lands. There, the Caranteses obtained a Certificate of Ancestral Land Claim (CALC) over their 30,368-square meter parcel of land located in Baguio City and, subsequently, fenced the premises and began constructing a residential building thereon. The PEZA sought recourse from the courts on the issue of whether the Caranteses may build structures within the Baguio City Economic Zone on the basis of their CALC and without the necessary permits issued by the PEZA. The Court held that as mere holders of a CALC, as opposed to a Certificate of Ancestral Land Title *(CALT)*, the Caranteses' right to possess is limited to occupation in relation to cultivation. We held further, however, that even if they were able to establish ownership of said ancestral land, acts of ownership such as fencing and building permanent structures thereon cannot summarily be done without complying with applicable laws requiring building permits issued by the PEZA. We elucidated as follows:

Respondents being holders of a mere CALC, their right to possess the subject land is limited to occupation in relation to cultivation.

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[62] *Id.* at 1071.

[63] 635 Phil. 541, 554 (2010).

Unlike No. 1, 26 Par. 1, Section 1, Article VII of the same DENR DAO, which expressly allows ancestral domain claimants to reside peacefully within the domain, nothing in Section 2 grants ancestral land claimants a similar right, much less the right to build permanent structures on ancestral lands — an act of ownership that pertains to one (1) who has a recognized right by virtue of a Certificate of Ancestral Land Title. On this score alone, respondents' action for injunction must fail.

Yet, even if respondents had established ownership of the land, they cannot simply put up fences or build structures thereon without complying with applicable laws, rules and regulations. In particular, Section 301 of P.D. No. 1096, otherwise known as the National Building Code of the Philippines mandates:

> SEC. 301. Building Permits. —
>
> **No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be lone without first obtaining a building permit therefor** from the Building Official assigned in the place where the subject building is located or the building work is to be done. x x x

This function, which has not been repealed and does not appear to be inconsistent with any of the powers and functions of PEZA under R.A. No. 7916, subsists. Complimentary thereto, Section 14 (i) of R.A. No. 7916 states:

> SEC. 14. **Powers and Functions of the Director General**. — The director general shall be the overall [coordinator] of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.
>
> In addition, he shall have the following specific powers and responsibilities:
>
> x x x x x x x x x

> (i) **To require owners of houses**, buildings or other structures constructed **without the necessary permit whether constructed on public or private lands, to remove or demolish such houses**, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding;
>
> **By specific provision of law, it is PEZA, through its building officials, which has authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands.**[64]

In the end, We held that PEZA acted well within its functions when it demanded the demolition of the structures which respondents had put up without first securing building and fencing permits therefrom. Like petitioners in this case, the respondents in *PEZA* failed to procure the permits that were required of them by law to obtain prior to their acts committed on their ancestral lands. But unlike the majority opinion in this case, We upheld in *PEZA* the enactments requiring prior authority and ruled that respondents should have first obtained the necessary permits. To me, *PEZA* is a proper application and harmonization of existing laws. It notably stands as a testament to the possibility of a healthy balance between the rights of IPs to their ancestral lands, on one end, and the duty of the State to protect said lands, on the other end.

It cannot be denied, therefore, that Philippine law and jurisprudence alike merely grant indigenous cultural communities a general right to preserve their cultural integrity, ancestral domains, and ancestral lands which is neither absolute nor limitless. Applicable constitutional provisions are ordinarily read in light of, and subject to, the broader framework of the national development. In particular, Section 22, Article II of the 1987 Constitution provides that "the State recognizes and

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[64] *Id*. at 550-554. (Emphases ours)

promotes the rights of indigenous cultural communities *within the framework of national unity and development*." Similarly, Section 5, Article XII provides that "the State, *subject to the provisions of this Constitution and national development policies and programs*, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being."

The same holds true for the IPRA. Section 7 (b)[65] thereof states that IPs shall have the right to use and explore the natural resources within their lands *for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws*. Moreover, Section 2 (e) thereof provides that the State shall ensure that IPs benefit *on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population*.[66] In fact, Section 9 holds IPs responsible to preserve and maintain a balanced ecology by protecting

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[65] Section 7 (b) of the IPRA provides:

b. *Right to Develop Lands and Natural Resources*. — Subject to Section 56 hereof, right to develop, control and use lands and territories traditionally occupied, owned, or used; to manage and conserve natural resources within the territories and uphold the responsibilities for future generations; to benefit and share the profits from allocation and utilization of the natural resources found therein; the right to negotiate the terms and conditions for the exploration of natural resources in the areas for the purpose of ensuring ecological, environmental protection and the conservation measures, pursuant to national and customary laws; the right to an informed and intelligent participation in the formulation and implementation of any project, government or private, that will affect or impact upon the ancestral domains and to receive just and fair compensation for any damages which they sustain as a result of the project; and the right to effective measures by the government to prevent any interfere with, alienation and encroachment upon these rights;

[66] Section 2 (e) of the IPRA provides:

e) The State shall take measures, with the participation of the ICCs/IPs concerned, to protect their rights and guarantee respect for their cultural integrity, and to ensure that members of the ICCs/IPs benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.

flora and fauna and participating in the reforestation of denuded areas.[67]

This parallel IP responsibility is a shared obligation between and among the State and its citizens to maintain a balanced ecology enshrined in Article II of the 1987 Constitution which provides that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.[68] Accordingly, *Oposa v. Factoran*[69] emphasizes the fundamental concept of intergenerational responsibility towards the right to a balanced and healthful ecology which implies, among many other things, the judicious management and conservation of the country's forests. Verily, without such forests, the ecological or environmental balance would be irreversibly disrupted.

This is the reason why I cannot succumb to the notion of entitlement of the State *vis-à-vis* the IP's cultural and environmental heritage, so as to make it appear as if the State, through the reckless use of its police power under P.D. No. 705, summarily dismisses IP rights as no longer a point of concern for it is "only police power," and police power alone, that matters.

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[67] Section 9 of the IPRA provides:

Section 9. *Responsibilities of ICCs/IPs to their Ancestral Domains*. — ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a. Maintain Ecological Balance — To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b. Restore Denuded Areas — To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; and

c. Observe Laws — To observe and comply with the provisions of this Act and the rules and regulations for its effective implementation.

[68] Section 16, Article II of the 1987 Constitution provides:

Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

[69] 296 Phil. 694 (1193).

Before Us is not merely an issue of "State versus IPs" where the rights of the IPs are unduly sacrificed in favor of the all-mighty State. On the contrary, one would not have to go so far as the confines of P.D. No. 705 itself to realize that the issue at hand most especially involves every citizen's right to a healthy ecology. In its "Whereas clauses," P.D. No. 705 explicitly declares the need to place emphasis not only on the utilization of forest lands and lands of the public domain but more so on their protection, rehabilitation, and development in order to ensure the continuity of their production condition.[70] Clearly, then, the main objective of P.D. No. 705 is not to empower the State to the detriment of IPs, but rather, to rectify the existing policies that remain unresponsive to the pressing issue of the depletion of our country's natural resources. Indeed, there exists legitimate objectives by which this police power is exercised through the employment of reasonable means within the confines of the law.

Make no mistake, though, I am by no means insensitive to the challenges IPs face. All this signifies, simply, is that before We ultimately decide on what would be the fate of our generation's ecology, and every generation after ours, it is imperative to put things in its proper perspective. In *Cruz*, it was pointed out that as early as 1997, around 12 million Filipinos

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[70] P.D. No. 705 provides:

WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;

WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;

WHEREAS, it is also imperative to place emphasis not only on the utilization thereof but more so on the protection, rehabilitation and development of forest lands, in order to ensure the continuity of their productive condition;

WHEREAS, the present laws and regulations governing forest lands are not responsive enough to support re-oriented government programs, projects and efforts on the proper classification and delimitation of the lands of the public domain, and the management, utilization, protection, rehabilitation, and development of forest lands;

are members of the 110 or so indigenous cultural communities (ICC), accounting for more than 17% of the estimated 70 million Filipinos in the country. Moreover, as of June 1998, over 2.5 million hectares have been claimed by various IPs as ancestral domains; and over 10 thousand hectares, as ancestral lands. In addition, ancestral domains cover 80 percent of our mineral resources and between 8 and 10 million of the 30 million hectares of land in the country. This means that 4/5 of its natural resources and 1/3 of the country's land will be concentrated among 12 million Filipinos constituting 110 ICCs, while over 60 million other Filipinos constituting the overwhelming majority will have to share the remaining.[71]

At present, it is estimated that there are now 14-17 million IPs belonging to 110 communities and more than 5.7 million hectares, about 1/6 of the country have been duly titled in the name of indigenous peoples.[72] Placed under this context, one can only imagine what our forests would be like should 14 million IPs engage in a mere "small-scale" logging within more than 5.7 million hectares of their ancestral domains under the defense that it will "ultimately redound to the benefit of the community" by virtue of their "customary traditions."

In response to this, the majority, together with Justice Caguioa, maintains not only that these fears of ecological degradation are more apparent than real but also that they are, nonetheless, addressed by the safeguards found in the IPRA itself. They assure us of limitations on the IP rights *that can be inferred from the provisions of the IPRA* on the IP's correlative responsibility "to establish and activate indigenous practices or culturally-founded strategies to protect, conserve and develop the natural resources and wildlife sanctuaries in the domain,"

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[71] *Cruz v. Secretary of Environment and Natural Resources*, *supra* note 49.

[72] Taken from website of the United Nations Development Program, (https://www.undp.org/content/dam/philippines/docs/Governance/fastFacts6%20%20Indigenous%20Peoples%20in%20the%20Philippines%20rev%201.5.pdf), and from the National Commission on Indigenous Peoples Official Facebook Portal (https://www.facebook.com/NCIPportal/photos/a.2073888702837501/3114873668738994).

the concept that "ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity," and that "ancestral domains are private but community property which belongs to all generations."[73] In fact, Justice Caguioa adds that the IPRA only recognizes sustainable traditional resource rights that allows the IPs to "sustainably use . . . *in accordance with their indigenous knowledge, beliefs, systems and practices*" the resources which may be found in the ancestral domains which, in turn, are "private but community property which belongs to all generations and therefore *cannot be sold, disposed or destroyed*."

I, however, beg to disagree. The preservation of our environment, more specifically the trees in our forests, cannot, and should not, merely be *inferred* from the rather general statements found in the provisions of the IPRA. Can it be said for certain that the imposition on IPs a general responsibility to conserve natural resources is enough to safeguard the forest reserves that the P.D. No. 705 seeks to protect? On the contrary, moreover, to leave to the IPs, or any person or community of persons for that matter, the sole prerogative to determine for themselves, *in accordance with their indigenous knowledge, beliefs, systems and practices*, is not only dangerous but reckless. That one cannot sell or dispose the resources found in one's land is hardly any protection against any potential abuse that the forest may endure.

Take this case, for instance. Petitioners herein would like to impress upon the Court their unfortunate predicament of being incarcerated for the mere act of cutting *one* tree, which they did only in their humble exercise of cultural integrity as indigenous peoples for the construction of a communal toilet. We must direct our attention, however, to some points to consider.

First, the Information states that petitioners knowingly cut the tree with the use of an unregistered power chainsaw.[74] This was admitted by petitioners in their *Salaysay ng Pagtatanggol*

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[73] See *majority opinion*, pp. 52-53.

[74] *Id.* at 49.

in saying that "*ginamit ang chainsaw sa pagputol upang hindi ma-aksaya ang kahoy para ito ay mapakinabangan sang-ayon sa nabanggit sa itaas*."[75] Realistically speaking, the fact that an IP was able to get a hold of, more so learn how to operate, such a sophisticated tool cannot be harmonized with their supposed nature as a people known to survive in isolated locations, with very little to no access to even the most basic social, commercial, and economical goods and services. On a related note, what then would the implication of the present majority opinion be to petitioners' violation of R.A. No. 9175 entitled "An Act Regulating the Ownership, Possession, Sale, Importation and Use of Chainsaws, Penalizing Violations thereof and for other Purposes" or the *Chainsaw Act of 2002*, which penalizes the mere possession of a chainsaw without first securing the necessary permit from the DENR?[76]

Second, the records of the case are bereft of evidence sufficient to prove that the cutting was, indeed, for the purpose of building a communal toilet. As borne by the records, the defense merely

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[75] Records, p. 18.

[76] Section 7 of R.A. No. 9175 provides:

SEC. 7. *Penal Provisions*. —

1. *Selling, Purchasing, Re-selling, Transferring, Distributing or Possessing a Chainsaw without a Proper Permit*. — Any person who sells, purchases, transfers the ownership, distributes, or otherwise disposes or possesses a chainsaw without first securing the necessary permit from the Department shall be punished with imprisonment of four (4) years, two (2) months and one (1) day to six years or a fine of not less than Fifteen thousand pesos (PhP15,000.00) but not more than Thirty thousand pesos (PhP30,000.00) or both at the discretion of the court, and the chainsaw/s confiscated in favor of the government.

x x x x

4. *Actual Unlawful Use of Chainsaw*. — Any person who is found to be in possession of a chainsaw and uses the same to cut trees and timber in forest land or elsewhere except as authorized by the Department shall be penalized with imprisonment of six (6) years and one (1) day to eight (8) years or a fine of not less than Thirty thousand pesos (PhP30,000.00) but not more than Fifty thousand pesos (PhP50,000.00) or both at the discretion of the court without prejudice to being prosecuted for a separate offense that may have been simultaneously committed. The chainsaw unlawfully used shall be likewise confiscated in favor of the government.

offered the lone testimony of Brgy. Captain Aceveda without any documentary exhibits. In his testimony, he revealed that the cutting of the tree was upon the initiative of "a certain Non-Governmental Organization (NGO)."[77]

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[77] *Rollo*, pp. 59 and 142. Brgy. Captain Aceveda testified as follows:

Atty. Florita: Your Honor, we are presenting Rolando Aceveda as witness to prove that there was a project by an NGO for the construction of the community comfort room at Baco and to prove that the place where the tree allegedly cut were located at the portion of the land owned by the Mangyans of Oriental Mindoro. With the kind permission of the Honorable Court?

x x x x

Q: On that day Mr. Witness when you were resting along the road did you witness anything unusual?
A: Yes ma'am.
Q: And what was that Mr. Witness?
A: Several policemen and DENR employees passed by ma'am.
Q: Did you ask them where they were going?
A: Yes ma'am.
Q: And what did they say?
A: According to them they were going to a place called Laylay in the Municipality of San Teodoro ma'am.
Q: Did they tell you what the reason was in visiting the place?
A: No ma'am.
Q: And then what happened next Mr. Witness?
A: They already went ahead ma'am.
Q: Hours after the policemen and the employees of the DENR passed by what happened, Mr. Witness?
A: After more or less two to three hours later they already returned ma'am.
Q: Did you notice anything unusual Mr. Witness?
A: Yes ma'am.
Q: And what was that?
A: They were already being accompanied by three mangyan persons ma'am.
Q: And could you identify before this Court who these mangyans were?
A: Yes ma'am.
Q: Could you identify the three?
A: Diosdado Sama, Bandy Masanglay, and Demetrio Masanglay ma'am.
Q: What was the reason that they were taken under custody by these policemen?
A: They cut down trees or lumbers ma'am.

The testimony, however, is insufficient to prove that the cutting of the tree was for the construction of a communal toilet. If petitioners indeed cut the tree for the toilet at the instance of the NGO, the defense should have presented petitioners instead of the barangay captain who has no personal knowledge of the circumstances leading to the arrest of the accused and any representative from the NGO to testify at the stand. It should have submitted such other supporting documentation such as plans and illustrations of the supposed communal toilet which are readily available to the NGO. The State, therefore, was deprived of its right to cross-examine the petitioners and test the credibility of their defense. Indeed, the admission of the solitary witness' testimony without personal knowledge violates the fundamental principles of justice and rules of fair play.[78]

Q: And where was the felled log cut Mr. Witness according to them?
A: In a land owned by the Mangyans ma'am.
Q: Where in particular Mr. Witness?
A: In Sitio Matahimik Barangay Baras, Baco ma'am.
Q: And according to them, what was the reason why that log was cut Mr. Witness?
A: *Those logs would be used in a project being initiated by an NGO ma'am*.
Q: *What NGO and what project was it Mr. Witness*?
A: *Team MISSION ma'am*.
Q: *What particular project Mr. Witness*?
A: *Construction of a community comfort room ma'am*.
Q: And you stated earlier Mr. Witness that the felled log was cut in the portion of the land owned by the Mangyans of Oriental Mindoro, am I correct?
A: Yes ma'am.
Q: Do you have any proof that the (discontinued) do you know of any proof that will establish the fact of ownership of the Mangyans?
A: Yes ma'am.
Q: What document is it Mr. Witness?
A: CADC 126 ma'am.

x x x x

Q: And you know of the project by Team MISSION as regards the construction of the community comfort room because you yourself is also a Mangyan and the barangay captain of the area, is that correct?
A: Yes ma'am. (TSN 5, pp. 3-8)

[78] *DST Movers Corporation v. People's General Insurance Corporation*, 778 Phil. 235, 248-249 (2016).

To me, presentation of such evidence is vital in order to ensure that the dangers posed by the loopholes existing in the law are prevented. Highly probable, if not already rampant, is the scenario where actual, illegal loggers course their criminal activities through IPs who, through the present majority opinion, will now be free from any liability whatsoever under the law. Surely, the majority could not have intended on exempting from the provisions of P.D. No. 705 persons other than members of indigenous communities who may very well convince these IPs to do the cutting for them. Neither could the IPRA have intended on authorizing non-IPs to exercise much less benefit from the rights granted therein. As a consequence, therefore, doubts arise as to the applicability of the provisions of the IPRA to the present case and whether the same can even be invoked at all. This notwithstanding, while it may be argued that such dangers can be addressed during trial, assuming the true perpetrators are apprehended, the damage which P.D. No. 705 seeks to prevent would have already been done, for one cannot re-plant the felled trees that took decades to mature.

Third, in their Supplement to the Motion for Reconsideration filed before the trial court, petitioners sought the court's consideration arguing that Iraya-Mangyans of the area did not altogether disregard the regulatory measures imposed by the State.[79] They averred that even before the passage of the IPRA, resource use permits were applied for and extended to IPs of the area by the DENR. As proof, petitioners presented a copy of the endorsement of the list of CSC holders issued by the DENR-CENRO of Calapan City. In fact, petitioners even stated in their Motion to Quash that the jurisdiction of the DENR over forest products is recognized and respected by the IPs.[80] Since petitioners had already established the practice of coordinating with the government, through the DENR, and complying with permit requirements thereof, I do not see any valid reason why they omitted to do so now.

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[79] Records, p. 277.

[80] *Id*. at 170.

Fourth, in the same Motion to Quash, petitioners cited an incident where the Tagbanua tribe logged numerous trees without a permit in Coron, Palawan, for the repair of *handrails* at the Kayangan Lake.[81] When the DENR tried to confiscate the logs, the tribe claimed they do not need a permit since the cutting was for the benefit of the community. By the simple allegation of community benefit, the Tagbanuas and all other IPs who log trees without permit can now be exonerated regardless of the number of trees they cut. I do not think this to have been the intention of the IPRA.

It would be well to realize, therefore, that the present case is not a simple, black-and-white quandary of an indigene *vis-à-vis* his IPRA rights under P.D. No. 705. As can be seen above, the case before Us presents far more interrelated issues for whether We would like to admit it or not, the seemingly innocuous acquittal of petitioners herein would ultimately result in considerable implications the Court may not have intended.

The majority acquits petitioners based on their unique characteristics as IPs that set them apart from the rest of the Filipinos. Justice Zalameda adds that due to IPs' limited access to information, challenges in availing learning facilities, and lack of financial resources, they must be treated differently from the Filipino mainstream. But how, then, do We reconcile this with the fact that petitioners actually went to school, even reaching the level of Grade IV primary education?[82] Or in the case of the Tagbanuas of Coron, how do We harmonize their supposed aboriginal characteristics to the fact that they are an IP group formally registered as a legal entity who, since receiving their ancestral domain title in 2001, have been requiring tourists to Coron Island to pay a fee prior to their entrance therein? How different, then, are petitioners from a typical, non-IP Filipino? Are we really prepared to cede all regulatory measures of the government to the IPs?

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[81] *Id*.

[82] *Id*. at 12.

As cited in the Dissenting Opinion of Justice Mario V. Lopez, Our ruling in *People v. Macatanda*[83] is instructive. There, accused, who was charged of cattle rustling under P.D. No. 533, sought the Court's lenient approach in view of his lack of instruction and education as well as his membership in a cultural minority, the two separate circumstances to be joined together to constitute the alternative circumstance of lack of instruction to mitigate his liability.[84] We, however, rejected the appeal in the following wise:

> Some later cases which categorically held that the mitigating circumstance of lack of instruction does not apply to crimes of theft and robbery leave us with no choice but to reject the plea of appellant. **Membership in a cultural minority does not per se imply being an uncivilized or semi-uncivilized state of the offender, which is the circumstance that induced the Supreme Court in the Maqui case, to apply lack of instruction to the appellant therein who was charged also with theft of large cattle.** Incidentally, the Maqui case is the only case where lack of instruction was considered to mitigate liability for theft, for even long before it, in U.S. vs. Pascual, a 1908 case, lack of instruction was already held not applicable to crimes of theft or robbery. **The Maqui case was decided in 1914, when the state of civilization of the Igorots has not advanced as it had in reaching its present state since recent years, when it certainly can no longer be said of any member of a cultural minority in the country that he is uncivilized or semi-uncivilized.**[85]

As early as 1981, *Macatanda* had already recognized the undeniable advancement of IPs insofar as civilization is concerned. A prime example of this is petitioners themselves: indigenes who are Grade IV graduates. It should no longer be

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[83] 195 Phil. 604 (1981).

[84] Article 15 of the RPC provides:

ARTICLE 15. *Their Concept*. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

[85] *People v. Macatanda*, *supra* note 83, at 510. (Emphasis ours)

reasoned that the unique character of IPs must operate to create a lenient exemption in their favor. As *Macatanda* instructs, mere membership in a cultural minority and the supposed lack of instruction it entails, does not completely exonerate an accused from criminal liability under penal laws.

Be that as it may, Justice Perlas-Bernabe asserts Section 20 (c)[86] of the ENIPAS Act of 2018,[87] which amended the NIPAS Act of 1992, to be another statute apart from the IPRA where the State permits IPs to utilize natural resources within their ancestral domains. She then concludes that this provision accurately demonstrates the constitutional and statutory protection of legitimate exercises of IPs' rights in an environmental legislation. The argument, however, fails to take certain circumstances into account.

In the first place, the land where the *dita* tree was cut herein is not covered by the provisions of the ENIPAS Act. The said law provides that a National Integrated Protected Areas System which aims to ensure sustainable use of resources shall apply to all designated protected areas,[88] one of which Mounts Iglit-

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[86] Section 20 (c) which provides:

Sec. 20. Prohibited Acts. — Except as may be allowed by the nature of their categories and pursuant to rules and regulations governing the same, the following acts are prohibited within protected areas:

x x x x

(c) Cutting, gathering, removing or collecting timber within the protected area including private lands therein, without the necessary permit, authorization, certification of planted trees or exemption such as for culling exotic species; except, however, when such acts are done in accordance with the duly recognized practices of the IPs/ICCs for subsistence purposes.

[87] *An Act Declaring Protected Areas and Providing for Their Management, Amending for this Purpose Republic Act No. 7586, Otherwise Known as the "National Integrated Protected Areas System (NIPAS) Act of 1992"* and for Other Purposes, approved on June 22, 2018.

[88] Section 2 of R.A. No. 11083 provides:

Sec. 2. Declaration of Policy. — x x x

"To this end, there is hereby established a National Integrated Protected Areas System (NIPAS), which shall encompass ecologically rich and unique areas and biologically important public lands that are habitats of rare and

Baco Natural Park in Occidental and Oriental Mindoro.[89] But while the land subject of the present case is also in the province of Oriental Mindoro, it is not located in any of the municipalities where Mounts Iglit-Baco Natural Park is located.[90] To recall, the *dita* tree was cut in the Barangay Calangatan, Municipality of San Teodoro. It must also be mentioned that both Pres. Proc. No. 557 and R.A. No. 6148 expressly identified only the Batangan tribe, one of the eight ethno-linguistic groups of the Mangyans, as the IP group which shall be allocated a 1,000-hectare area within the protected area for their settlement and development. But petitioners herein are Iraya-Mangyans and are not part of the Batangan tribe.[91] Evidently, the land subject of the present case is not part of the protected area that is Mounts Iglit-Baco Natural Park and is, therefore, not subject to the provisions of the ENIPAS Act.

In the second place, even if We assume that the subject land is covered by the ENIPAS Act, petitioners are nonetheless liable for violating the provisions thereof. Contrary to Justice Perlas-Bernabe's postulation, IPs still do not possess an unbridled right to log trees within a protected area. A cursory perusal of the ENIPAS Act and its IRR reveals that these protected areas are, in fact, strictly regulated, perhaps even stricter than

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threatened species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine, all of which shall be designated as 'protected areas.'"

[89] See Section 5 of R.A. No. 11083 for full list of protected areas.

[90] According to the Guidebook to Protected Areas in the Philippines, published by the Biodiversity Management Bureau and the DENR (2015), Mounts Iglit-Baco Natural Park was first established as a tamaraw reservation and bird sanctuary by virtue of Presidential Proclamation No. 557 in 1969, as a national park under R.A. No. 6148 in 1970, and as a protected area under both the NIPAS Act in 1992 and ENIPAS Act in 2018. It encompasses the municipalities of Sablayan, Calintaan, Rizal, and San Jose in Occidental Mindoro as well as municipalities of Gloria, Bansud, Bongabon, and Mansalay in Oriental Mindoro.

[91] The Guidebook to Protected Areas in the Philippines, *id.*, stated that the Mangyans, an indigenous group of Mindoro, is further classified into at least eight ethno-linguistic groups: Iraya, Batangan, Hanuno'o, Alangan, Ratagnon, Tagaydan or Tadyawan, Buhid and Pula.

unprotected ones. Pursuant to the provisions of the ENIPAS Act and its IRR, any tree cutting activity to be conducted by IPs within protected areas must first satisfy the following requirements: (1) a cutting permit from the Protected Area Superintendent (PASu) which is primarily accountable to the Protected Area Management Board (PAMB) and the DENR for the management and operations of the protected area;[92] (2) the tree shall be solely for traditional and subsistence uses; (3) only five cubic meters per applicant per year is allowed;[93] (4) no permit shall be required of Protected Area Community Based Resource Management Agreement *(PACBRMA)* holders; (5) the total volume cut shall not exceed limits set by the PAMB;

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[92] Section 11-B of the ENIPAS Act provides that:

"Sec. 11-B. The Protected Area Management Office (PAMO). — There is hereby established a Protected Area Management Office (PAMO) to be headed by a Protected Area Superintendent (PASU) with a permanent plantilla position who shall supervise the day management, protection and administration of the protected area. A sufficient number of support staff with permanent plantilla position shall be appointed by the DENR to assist the PASU in the management of the protected area.

"The PASU shall be primarily accountable to the PAMB and the DENR for the management and operations of the protected area. Pursuant thereto, **the PASU shall have the following duties and responsibilities**: x x x

"(i) **Issue permits and clearances for activities** that implement the management plan and other permitted activities in accordance with terms, conditions, and criteria established by the PAMS: Provided, That all permits for extraction activities, including collection for research purposes, shall also continue to be issued by relevant authorities, **subject to prior clearance from the PAMB, through the PASU**, in accordance with the specific acts to be covered."

[93] The IRR of the ENIPAS Act provides:

Rule 11-B.3 In addition to the functions enumerated in Section 11-B, **the PASU shall perform the following duties** and responsibilities: x x x

d. **Recommend actions for cutting permit** for planted trees **solely for the traditional and subsistence uses by ICCs/IPs** and tenured migrants, of **up to five (5) cubic meters per applicant per year**. Provided, that, PACBRMA holders with affirmed Community-based Resource Management Plan shall no longer be issued cutting permits. Provided, further, that **the total volume cut shall not exceed the limits set by the PAMB**, and that the **location of the cutting is within the appropriate site** within the Multiple Use Zone; and x x x (Emphasis ours)

and (6) the cutting must be within the Multiple Use Zone.[94] The records of the present case, however, do not contain any proof whatsoever of compliance with these requirements.

It would not take more than a plain and simple reading of the ENIPAS Act and its IRR for one to realize that protected areas, as the name suggests, are subject to the strictest regulations and under the closest surveillance of the government.[95] With good reason, too, for these areas are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, that require nothing but the State's utmost care and supervision.[96]

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[94] Rule 23.5 of the IRR of the ENIPAS Act provides:

Rule 23.5 In case of protected areas that share common areas with ancestral territories covered by CADT/CALT, the DENR, upon the recommendation of the PAMB and with the FPIC of the affected ICCs/IPs, shall enter into a Protected Area Community-Based Resource Management Agreement (PACBRMA) with the tenured migrant communities of the protected areas.

The DENR shall organize individual tenured migrants into communities. Within one (1) year from the issuance of the PACBRMA, tenure holders shall be required to prepare a Community-Based Resource Management Plan (CBRMP), on the basis of the following processes: community mapping, plan preparation, map integration, final validation, PAMB endorsement, and affirmation by the DENR Regional Executive Director. Failure to implement the CBRMP shall be basis for the cancellation of the PACBRMA.

[95] Under the ENIPAS Act and its IRR, the National Integrated Protected Area System is placed under the control and administration of the DENR, through the Biodiversity Management Bureau (BMB). Before a protected area is declared as such, it undergoes a rigorous process where the DENR prepares reports in consultation with other key stakeholders such as local government units (LGUs), NGOs, and IPs taking into consideration all essential factors of the area such as irreplaceability, vulnerability, naturalness, abundance and diversity, geological and aesthetic features of the area. Upon receipt of recommendations from the DENR, the President shall issue a proclamation establishing the proposed protected areas until such time when Congress shall have enacted a law to that effect. Then, the PAMB, with the support of the DENR, shall formulate the Protected Area Management Plan (PAMP) with the participation of necessary agencies such as NGOs, LGUS, and all stakeholders such as the IPs and other local communities. This plan serves as the basic long-term framework for the management of the protected area which shall be harmonized with the IPs' Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) required under the IRR of the IPRA.

[96] See Declaration of Policy under Section 2 of the ENIPAS Act.

Indeed, the intent of the law to clothe the State, through the DENR, with the duty of regulating natural resources found on lands, whether protected or not, can no longer be denied. In both protected and unprotected areas, it is the DENR, through various offices under its authority, that is tasked with the issuance of cutting permits as well as with the responsibility to execute agreements with all interested stakeholders, IPs included, to enforce plans in the sustainable management of natural resources, taking into account the existing cultural traditions of the IPs.

This does not mean, however, that it is only the State and its interests which shall be the sole consideration in the management of natural resources found in the ancestral domains. Emerging in our current legal framework is a trend towards a pro-active and collaborative effort to achieve a reasonable balance between the recognition of IPs' rights to their lands, on the one hand, and the protection of scarce resources found within these lands, on the other. This is the clear import of DENR-NCIP Joint AO No. 2008-01 as well as the ENIPAS Act and its IRR in mandating the State to consult with all interested IPs towards a holistic agreement that will institutionalize the traditional and culture-driven forest resources practices of the IPs. To me, both the State and the IPs can benefit from the present shift to a more decentralized form of management where participation and dialogue between and among *all* stakeholders is encouraged.

We must never lose sight of the fact that regulation by the State of our natural resources, most especially trees which take years to grow, is not a pointless exercise that is meant to thwart the rights of IPs. On the contrary, it is specifically crafted to preserve such resources so that generations of Filipinos, whether indigenous or not, will have the chance to enjoy the same many, many years from now. While We acknowledged, in *Maynilad*, the State's rights over natural resources, We simultaneously introduced the *Public Trust Doctrine* which impresses upon States the correlative, affirmative duties of a trustee to manage natural resources for the benefit of the beneficiaries, the present

and future generations.[97] Clearly, the passage of P.D. No. 705 serves as an actual, legitimate application by the State of the *Public Trust Doctrine* which not only asserts its rights over forest resources but also aims to preserve the same for the benefit of the People.

For this reason, I do not share the view that the acquittal handed to the petitioners in this case is not a blanket exemption. No matter how one looks at it, the implication of the present majority opinion would be just that: a blanket exemption. For how, then, can the Court prevent all other IPs from invoking the doctrine of this case under the principle of *stare decisis*? In *Cruz*, Justice Kapunan, who seems to have foreseen the present scenario, explicitly emphasized that "the grant of said priority rights to indigenous peoples is not a blanket authority to disregard pertinent laws and regulations. The utilization of said natural resources is always subject to compliance by the indigenous peoples with existing laws, . . . since it is not they but the State, which owns these resources."[98]

Neither can it be accurately concluded that an outright logging ban puts the lives of IPs at risk for their everyday lives are so intimately intertwined with the land and resources. The present case merely involves trees or timber that are cut without the requisite license under P.D. No. 705. It does not, however, cover those natural resources that are truly essential to the daily sustenance of these IPs. Even with the operation of P.D. No. 705, IPs are very much free to hunt forest animals, gather plants, and cultivate their lands within their domains with little to no governmental interference. But even if we assume that the cutting of timber is so indispensable to the everyday lives of IPs such that one cannot survive a day without cutting a tree, then government regulation is all the more necessary to prevent the depletion of these trees that take decades and decades to grow.

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[97] *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources, supra* note 53.

[98] *Cruz v. Secretary of Environment and Natural Resources, supra* note 49, at 1077.

Regrettably, then, I cannot join the majority's invocation of a "confusing state of affairs" to justify petitioners' acquittal from their otherwise prohibited act. For how can there be any confusion when there was never a time after the passage of P.D. No. 705 where IPs, or anyone for that matter, were exempted from the permit requirement. As chronologically detailed above, both the Legislature and Executive have, time and time again, reiterated this need for DENR authority prior to any tree-cutting activity.

Besides, it cannot truthfully be declared that petitioners were, indeed, confused. As previously noted, petitioners already had a practice of applying for resource use permits from the DENR, through its local office, CENRO, in Calapan City. In fact, they even presented a copy of the endorsement of the list of CSC holders issued by the DENR-CENRO of Calapan City.[99]

In the end, it must be remembered that our Constitution vests the ownership of natural resources, not in a select few, but *in all the Filipino people*.[100] The inherent importance of these natural resources to society as a whole is beyond cavil, the same being inseparable to our very existence. To me, exempting petitioners from liability under P.D. No. 705 is virtually tantamount to the surrender of any remaining rights of the People to a chosen sector of society. Certainly, this could not have been the intention of the IPRA, let alone our Constitution. No right must be so great so as to create an unrestricted license to act according to one's will.

It cannot be stressed enough, however, that the provisions of P.D. No. 705 do not, in any way, strip IPs of their rights duly enshrined in the law. The end, simply, is to shed light on other equally pressing rights, such as the rights to a balanced and healthful ecology and to health. Now more than ever, at a time when clear-cut lines between seemingly competing rights can no longer be drawn, of utmost importance is the availability

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[99] Records, p. 170.

[100] See Separate Opinion of Justice Panganiban, *Cruz v. Secretary of Environment and Natural Resources, supra* note 49, at 1105.

of dialogue and representation — dialogue among *all* concerned sectors of society. For as warned by *Oposa*, unless the environment is given continued significance, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life.[101]

In view of the foregoing, I vote to **DENY** the petition. Petitioners Diosdado Sama y Hinupas and Bandy Masanglay y Aceveda should be convicted of violation of Section 68, now Section 77, of Presidential Decree No. 705.

DISSENTING OPINION

LOPEZ, *J.*:

This case stemmed from an Information dated May 27, 2005, charging Diosdado Sama and Bandy Masanglay (petitioners) with violation of Section 77[1] of Presidential Decree (PD) No. 705, known as the Revised Forestry Code of the Philippines. Allegedly, the petitioners unlawfully and knowingly logged a *dita* tree with the use of unregistered power chainsaw, without any authority required under the existing laws and regulations. The petitioners were caught *in flagrante delicto* when Police Officer (PO) 3 Villamor D. Rance, together with his team

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[101] *Oposa v. Factoran, supra* note 69, at 713.

[1] SECTION. 77. *Cutting, Gathering and/or Collecting Timber, or Other Forest Products Without License*. — Any person who shall cut, gather, collect, remove timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code: x x x

The court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed, or possessed as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found.

comprised of police officers and representatives of the Department of Environment and Natural Resources (DENR), were patrolling the mountainous areas in Barangay Calangatan, San Teodoro, Oriental Mindoro, to address the illegal logging operations in the area.

The petitioners claimed that they were Iraya-Mangyan Indigenous Peoples (IPs) and admitted cutting the *dita* tree planted within their ancestral domain. However, the cutting was for the purpose of constructing their community toilet – a project initiated and organized by a Non-Government Organization (NGO).

The Regional Trial Court convicted the petitioners and ruled that cutting down the *dita* tree without a corresponding permit is a violation of PD No. 705, a *malum prohibitum*. The Court of Appeals affirmed the petitioners' conviction. However, the *ponencia* acquitted the petitioners.

Prefatorily, I agree with the *ponencia* that the Constitution and Indigenous Peoples' Rights Act (IPRA)[2] have recognized and strengthened the rights of IPs. I also agree that the *dita* tree collected by the petitioners is a specie of *timber* gathered from a private land (or forest or alienable land) within the contemplation of Section 77 of PD No. 705. I likewise concur that "as outlined, Section 77 requires prior authority for any of the acts of cutting, gathering, collecting, removing timber or other forest products even from those lands possessed by IPs falling within the ambit of the statute's definition of private lands." This is precisely what Section 77 of PD No. 705 seeks to penalize - the cutting of tree sans authority. Nevertheless, the *ponencia* acquitted the petitioners based on reasonable doubt that the *dita* tree was cut and collected without authority from the State. It anchored the reasonable doubt on "the confusion arising from the new legal developments, particularly, the recognition of the indigenous peoples' (IPs) human rights normative system, in our country."

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[2] Republic Act No. 8371; approved on October 29, 1997.

Regretfully, I respectfully dissent. Mere confusion brought about by the legal developments should not be used as a basis to acquit the petitioners, especially when it was not proven and shown, both from the literal text and the intent of the law, that IPs are indeed exempted from PD No. 705.

Furthermore, I respectfully opine that the basis for the acquittal in *Saguin v. People*,[3] does not merely rest on the confusion of the laws. The Court considered the devolution of the functions of the hospital to the provincial government as the legal basis for exonerating accused Saguin, *et al.* Since they had no more duty to make the remittances, they could not be held liable under PD No. 1752, as amended:

> "By April 1, 1993, however, the RMDH had been devolved to the Provincial or Local Government of Zamboanga del Norte. Thus, all financial transactions of the hospital were carried out through the Office of the Provincial Governor. **The petitioners, therefore, had legal basis** to believe that the duty to set aside funds and to effect the HDMF remittances was transferred from the hospital to the provincial government. Hence, the petitioners should not be penalized for their failure to perform a duty which were no longer theirs and over which they were no longer in control.
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> x x x x
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> The devolution of the hospital to the provincial government, therefore, was **a valid justification which constituted a lawful cause** for the inability of the petitioners to make the HDMF remittances for March 1993."[4] (Emphases supplied.)

As opposed to *Saguin*, here, it is not clear whether indigenous people have legal basis to cut trees without permits, free from government regulation. Ultimately, the case before us begs the resolution of the indispensable question — Does the IPRA categorically and specifically grant in favor of indigenous people the authority to cut, gather, collect, remove timber or other forest products free from criminal liability under PD No. 705?

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[3] 773 Phil. 614 (2015).

[4] *Id.* at 627-628 (2015).

I answer in the negative. To construe IPRA as a subset of the term "authority" under Section 77 of the Revised Forestry Code will, in effect, make IPRA an exception to the penal provisions of PD No. 705. While the IPRA mentions of the rights of IPs to claim ownership over areas traditionally and actually occupied by them, to manage and conserve natural resources within the ancestral domains, the right to cultural integrity, or such other rights which every indigenous person should enjoy under the law, there is no mention of any exemption from the licensing requirement as far as the cutting, gathering, collecting, or removing of timber or other forest products is concerned. This Court cannot simply expand the implications of the provisions of IPRA to carve out an exception in favor of indigenous people, when such has not been clearly established to be the intent of the legislature. To do so would run counter to the well-established rule of strict interpretation against exceptions.

In *Samson v. CA*,[5] we ruled that "under the rules of statutory construction, exceptions, as a general rule, should be strictly, but reasonably construed; they extend only so far as their language fairly warrants, and *all doubts should be resolved in favor of the general provisions rather than the exception*. Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication."[6]

Notably, the IPRA provides an exemption from taxes in favor of ancestral domains owned by indigenous people, to wit:

> SEC. 60. *Exemption from Taxes*. — All lands certified to be ancestral domains shall be exempt from real property taxes, special levies, and other forms of exaction except such portion of the ancestral domains as are actually used for large-scale agriculture, commercial forest plantation and residential purposes or upon titling by private

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[5] 230 Phil. 59 (1986).

[6] *Id*. at 64, citing Francisco, Statutory Construction, p. 304, citing 69 C.J., Section 643, pp. 1092-1093.

persons: *Provided,* That all exactions shall be used to facilitate the development and improvement of the ancestral domains.

Had it been the intent of the legislature to consider the IPRA as an additional authority for indigenous people to cut, gather, collect, remove timber or other forest products within the ancestral domain as an exception to the penal provisions of the Revised Forestry Code, it would have simply expressed so, similar to the clear import to exempt ancestral domains from real property taxes and other forms of state exaction. The fact that no such import was provided under the IPRA is a testament to the proposition that the IPRA was never intended as an exception to the requirement of a permit, license, agreement, or such other authority as may be applicable.

I maintain my submission that the IPs do not possess the right to cut forest products free from state regulation. There is no indication that they are excluded from the coverage of PD No. 705. This can be gleaned from a scrutiny of both the literal text and the legislative intent behind PD No. 705, IPRA, and other pertinent regulations.

First. The language of Section 77 of PD No. 705, which remained unamended even with the passage of IPRA, is plain and clear — *any person who shall cut x x x forest products x x x without any authority xxx shall be punished.* The use of the word "any person," without any distinction nor exemption as to the coverage of the penal provision, makes it clear that everyone is a potential offender of the crime. Where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemus.*

Second. It appears that the Legislature, in enacting PD No. 705, already considered the members of the indigenous groups. Therefore, they could be penalized under its provisions.

Third. Sections 37 to 39 of PD No. 705, as amended, provide for the statutory basis for the State to protect our forests and regulate timber utilization in all classes of lands:

SEC. 37. *Protection of all Resources*. — All measures shall be taken to protect the forest resources from destruction, impairment and depletion.

SEC. 38. *Control of Concession Area*. — In order to achieve the effective protection of the forest lands and the resources thereof from illegal entry, unlawful occupation, kaingin, fire, insect infestation, theft, and other forms of forest destruction, the utilization of timber therein shall not be allowed except through license agreements under which the holders thereof shall have the exclusive privilege to cut all the allowable harvestable timber in their respective concessions, and the additional right of occupation, possession, and control over the same, to the exclusive of all others, except the government, but with the corresponding obligation to adopt all the protection and conservation measures to ensure the continuity of the productive condition of said areas, conformably with multiple use and sustained yield management.

x x x x

SEC. 39. ***Regulation of Timber Utilization in all Other Classes of Lands*** *and of Wood-Processing Plants.***— The utilization of timber in alienable and disposable lands, private lands, civil reservations, and all lands containing standing or felled timber**, including those under the jurisdiction of other government agencies, and the establishment and operation of saw-mills and other wood-processing plants, **shall be regulated** in order to prevent them from being used as shelters for excessive and unauthorized harvests in forest lands, and shall not therefore be allowed except through a license agreement, license, lease or permit. (Emphasis supplied.)

Fourth. The IPRA merely gives the indigenous people "priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains," *viz*:

Sec. 57. ***Natural Resources within Ancestral Domains.*** — The ICCs/IPs shall have **the priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains**. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs

concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the all extractions shall be used to facilitate the development and improvement of the ancestral domains. (Emphasis supplied.)

Fifth. The IPRA bestowed not only rights, but also imposed obligations, upon the indigenous people, to conserve natural resources and maintain ecological balance therein. One way of fulfilling their obligation is to follow laws which are geared towards minimizing the unregulated and indiscriminate logging of trees.

Sec. 9. *Responsibilities of ICCs/IPs to their Ancestral Domains*. — ICCs/IPs occupying a duly certified ancestral domain shall have the following responsibilities:

a. Maintain Ecological Balance- To preserve, restore, and maintain a balanced ecology in the ancestral domain by protecting the flora and fauna, watershed areas, and other reserves;

b. Restore Denuded Areas- To actively initiate, undertake and participate in the reforestation of denuded areas and other development programs and projects subject to just and reasonable remuneration; x x x.

Sixth. The IPRA does not exempt the IPs from the licensing requirement. The State did not relinquish its ownership over the natural resources found in ancestral domains.

A perusal of the congressional deliberations on the IPRA, as pointed out by the esteemed and learned Senior Associate Justice Perlas-Bernabe, would show that it was not the intention of the Legislature, by enacting the IPRA, to bestow ownership of natural resources to the indigenous people. "The subject timber or *dita* tree in this case was owned by the State even if it stood within an ancestral domain," *viz*:

Relevant to the first element under Section 77 is Section 2, Article XII of the 1987 Constitution, which provides:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests **or** **timber**, wildlife, flora and fauna, and other **natural**

resources are owned by the State. With the exception of agricultural lands, **all other natural resources shall not be alienated**. The exploration, development, and **utilization of natural resources shall be under the full control and supervision of the State**. x x x.

x x x x

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. (Emphases and underscoring supplied.)

As explicitly stated, all "natural resources are owned by the State." While categories of lands (*i.e*. lands of public domain and agricultural lands) were therein provided, there is no qualifier created for timber and other natural resources. Moreover, while the provision allows the alienation of agricultural lands, it prohibits the alienation of natural resources. Accordingly, Section 77 punishes the cutting of timber — a natural resource — regardless of the character of the land where the tree was once situated.

Consistent with the State's ownership of natural resources, Section 57 of the IPRA accords IPs mere "priority rights" in the utilization of natural resources is clear from the congressional deliberations therefor:

HON. DOMINGUEZ: Mr. Chairman, if I may be allowed to make a very short Statement. Earlier, Mr. Chairman, *we have decided to remove the provisions on natural resources because* ***we all agree that belongs to the State***. Now, the plight or the rights of those indigenous communities living in forest and areas where it could be exploited by mining, by dams, so can we not also provide a provision to give little protection or either rights for them to be consulted before any mining areas should be done in their areas, any logging done in their areas or any dam construction because this has been disturbing our people especially in the Cordilleras.

Based on the foregoing, the subject timber or *dita* tree in this case was owned by the State even if it stood within an ancestral domain. Considering that petitioners admitted that they cut the *dita* tree found within the ancestral domain, the first element of Section 77 is present.[7] (Citations omitted.)

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[7] Separate Opinion of Senior Associate Justice Estela M. Perlas-Bernabe, pp. 2-4.

Therefore, the State has the power to enact laws to regulate the logging of trees and the utilization of timber and other natural resources found therein. Precisely, PD No. 705 is an example of such regulation.

Seventh. The Legislature intended to impose an all-encompassing and overreaching prohibition to log trees without license or permit. This is evident from the government regulations on the rights of private landowners to cut, gather, and utilize trees.

For instance, under DENR Administrative Order (AO) No. 2000-21, a Private Land Timber Permit must be applied for even by a landowner "for the cutting, gathering and utilization of naturally grown trees in private lands."[8] On the other hand, a Special Private Land Timber Permit is "issued to a landowner specifically for the cutting, gathering and utilization of premium hardwood species including Benguet pine, both planted and naturally-grown trees."[9] Interestingly, even the ownership, possession, sale, importation, and use of chainsaw is regulated by the government, to conserve, develop and protect the forest resources.[10] These regulations show the aggressive measures of our government to regulate the protection of our forests and trees.

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[8] DENR Administrative Order No. 2000-21; See <https://forestry.denr.gov.ph/index.php/fmb-product-and-services/private-land-timber-permit>, accessed last August 20, 2020

[9] DENR Administrative Order No. 2000-21, See <https://forestry.denr.gov.ph/index.php/fmb-product-and-services/special-private-land-timber-permit>, accessed last August 20, 2020

[10] Chain Saw Act of 2002, Republic Act No. 9175, November 7, 2002 Section 2 thereof provides:

SEC. 2. Declaration of Policy. — It is the policy of the State, consistent with the Constitution, to conserve, develop and protect the forest resources under sustainable management. Toward this end, the State shall pursue an aggressive forest protection program geared towards eliminating illegal logging and other forms of forest destruction which are being facilitated with the use of chain saws. The State shall therefore regulate the ownership, possession, sale, transfer, importation and/or use of chain saws to prevent them from being used in illegal logging or unauthorized clearing of forests.

Eighth. There is no indication that indigenous people are excluded from the broader regulatory powers of the State.

It appears that the Court, in the past, had already been confronted with the same dilemma of harmonizing lack of instruction and cultural minority with criminal liability.

In *People v. Macatanda*,[11] the accused therein was convicted of the crime of cattle rustling under PD No. 533. In his appeal, he faulted the court *a quo* for refusing to appreciate the "mitigating circumstances of (1) lack of instruction, and (2) [his] being a member of a cultural minority, being a Moslem." The Court rejected such argument and ruled that:

> Appellant, however, prays for a lenient approach in consideration of his being an ignorant and semi-uncivilized offender, belonging to a cultural minority, the two separate circumstances to be joined together to constitute the alternative circumstance of lack of instruction to mitigate his liability x x x.
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> x x x x
>
> Some later cases which categorically held that the mitigating circumstance of lack of instruction does not apply to crimes of theft and robbery leave us with no choice but to reject the plea of appellant. Membership in a cultural minority does not per se imply being an uncivilized or semi-uncivilized state of the offender, which is the circumstance that induced the Supreme Court in the Maqui case, to apply lack of instruction to the appellant therein who was charged also with theft of large cattle. Incidentally, the Maqui case is the only case where lack of instruction was considered to mitigate liability for theft, for even long before it, in U.S. vs. Pascual, a 1908 case, lack of instruction was already held not applicable to crimes of theft or robbery. x x x.[12]

Even in the earlier 1914 case of *United States v. Juan Maqui*,[13] the Court refused to completely exonerate the accused

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[11] 195 Phil 604 (1981).

[12] *Id*. at 609-610.

[13] 27 Phil. 97 (1914).

who was considered as an "uncivilized Igorot." The Court still convicted him but mitigated his penalty, to wit:

> We are satisfied beyond a reasonable doubt as to the guilt of the accused, but we are opinion that in imposing the penalty the trial court should have taken into consideration as a mitigating circumstance the manifest lack of "instruction and education" of the offender. It does not clearly appear whether he is or not an uncivilized Igorot, although there are indications in the record which tend to show that he is. But in any event, it is very clear that if he is not a member of an uncivilized tribe of Igorots, he is a densely ignorant and untutored fellow, who lived in the Igorot country, and is not much, if any, higher that are they in the scale of civilization. The beneficent provisions of article 11 of the Penal Code as amended by Act No. 2142 of the Philippine Legislature [Now Article 15 of the Revised Penal Code] are peculiarly applicable to offenders who are shown to be members of these uncivilized tribes, and to other offenders who, as a result of the fact that their lives are cast with such people far away from the centers of civilization, appear to be so lacking in "instruction and education" that they should not be held to so high a degree of responsibility as is demanded of those citizens who have had the advantage of living their lives in contact with the refining influences of civilization.[14]

The 1981 case of *Macatanda* already settled that there is no such thing as uncivilized cultural minority which would warrant "lenient treatment" from criminal liability:

> The *Maqui* case was decided in 1914, when the state of civilization of the Igorots has not advanced as it had in reaching its present state since recent years, when it certainly can no longer be said of any member of a cultural minority in the country that he is uncivilized or semi-uncivilized.[15]

Hence, the mere fact that the petitioners belonged to the cultural minority or are lacking access to information should not be used to acquit or completely absolve them from liability. To adopt the "liberal approach" would be to carve out an exemption from penal laws in favor of indigenous people, which

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[14] *Id.* at 100-101.

[15] *Supra* note 10, at 610.

could not have been the intention of our government, or of any government for that matter.

The principle "ignorance of the law excuses no one from compliance therewith" must be upheld. The conclusive presumption that everyone knows the law, and that no one can be excused from compliance therefrom, constitutes the very bonds of a lawful and orderly society.

There is no inconsistency between the IPRA and the Revised Forestry Code. Statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[16] **Merely because a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative or a continuation of the old one.**[17]

As pointed out by Chief Justice Peralta, the DENR- National Commission on Indigenous Peoples (NCIP) Joint AO No. 2008-01 effectively harmonized the provisions of PD No. 705 with the IPRA:

> As a matter of fact, the DENR, together with the NCIP, had already effectively harmonized these interests found in the provisions of P.D. No. 705 and the IPRA when it issued DENR-NCIP Joint AO No. 2008-01. By virtue of the joint order, the State duly recognized the inherent right of the IPs to self-governance as well as their contribution to the conservation of the country's environment and natural resources, ensuring equitable sharing benefits thereof.
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> Evidently, a reasonable balance between IP rights under the IPRA and protection of forest resources under P.D. No. 705 is already in place. Pursuant to the joint order above, the State expressly recognizes and adheres to the Sustainable Traditional and Indigenous Forest Resources Management Systems and Practices (STIFRMSP) of IPs as well as their Indigenous Knowledge Systems and Practices (IKSP)

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[16] *Republic v. Yahon*, 736 Phil. 397, 410 (2014).

[17] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827 (1948), citing Statutory Construction, Crawford, p. 634.

under their customary laws. Said order mandates all concerned stakeholders consisting of the IPs, the DENR, NCIP, Local Government Units (LGU) to come into an agreement which shall explicitly employ these customary IP practices consistent with their own traditions and cultures to govern their resource utilization within subject forest areas. It is after a rigorous and comprehensive process of consultation and dialogue between and among the parties that the DENR shall issue a forest resource utilization permit upon registration of their STIFRMSP as well as the Joint Implementing Rules and Regulations aimed not only at institutionalizing indigenous and traditionally managed forest practices but, at the same time, utilizing said practices for the protection of the natural resources found in managed forest lands.[18]

Ultimately, the IPs are not being deprived of their rights under the IPRA over the ancestral domains and the natural resources. Their preferential right over the natural resources found within their ancestral domains is neither taken away from them nor trampled upon by the government. What is merely required is that they secure documentation or permit, through their leaders or representatives, and with the guidance and cooperation of the NCIP and the DENR, before executing their logging activities. This is to ensure that the government may keep track of the areas they are allowed to log, that the purpose of their logging is within the bounds of IPRA, and, ultimately, to preserve the Philippine forestry. This is the most prudent thing that the State must do as *parens patriae* not only for this generation but for the future Filipino generations to come.

One must not lose sight of the danger that this precedent might set for persons, who, in the future, may find themselves under the same or similar factual circumstances. A single instance of cutting a *dita* tree, if not sanctioned by the government, when done simultaneously on every single day of the year, by every indigenous person living across the Philippine islands, could cause tremendous impact on our environment. The present and the future generations will ultimately be the victims of the deleterious impact of sanctioning logging without permit:

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[18] Dissenting Opinion of Chief Justice Diosdado M. Peralta, pp. 12-14.

The Court can well take judicial notice of the deplorable problem of deforestation in this country, considering that the deleterious effects of this problem are now imperiling our lives and properties, more specifically, by causing rampaging floods in the lowlands. **While it is true that the rights of an accused must be favored in the interpretation of penal provisions of law, it is equally true that when the general welfare and interest of the people are interwoven in the prosecution of a crime, the Court must arrive at a solution only after a fair and just balancing of interests**.[19] (Emphasis supplied.)

It must be noted that property rights are always subject to the State's police power, or the authority to enact legislation that may interfere with personal liberty or property to promote the general welfare.[20] Indeed, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of policy power because property rights, though sheltered by due process, must yield to general welfare.[21]

I understand that the conviction of the petitioners may be viewed as harsh considering their customs and way of life, and that what was involved was a lone *dita* tree. But compassion should not deter us from faithfully enforcing our criminal and environmental laws to their full extent. In any case, under Article 5[22] of the Revised Penal Code, the

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[19] *Lalican v. Hon. Vergara*, 342 Phil 485, 498 (1997).

[20] *Acosta v. Ochoa*, G.R. Nos. 211559, 211567, 212570 & 215634, October 15, 2019.

[21] *Manila Memorial Park, Inc. v. Sec. of the Dep't. of Social Welfare and Dev't.*, 722 Phil. 538, 568 (2013).

[22] Art. 5. *Duty of the Court in Connection with Acts Which Should Be Repressed but Which are Not Covered by the Law, and in Cases of Excessive Penalties*. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the

Court may recommend executive clemency when the penalty is excessive.[23]

In sum, the strict application of PD No. 705 amounts to nothing more than the **Court's fealty to uphold the people's right to a balanced and healthful ecology, a basic right assumed to exist from the inception of humankind,**[24] **characterized as no less important than any of the civil and political rights mentioned under the Bill of Rights,**[25] **the advancement of which may even be said to predate all governments and constitutions**[26] **— for the benefit of the present and future generations, including that of the *Iraya Mangyans* and other indigenous people all across the archipelago**.

Lest it be forgotten, PD No. 705 is a special law enacted to regulate the "management, utilization, protection, rehabilitation, and development of forest lands."[27] Violation of Section 77 is

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provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

[23] *Idanan v. People*, 783 Phil. 429, 440 (2016).

[24] The Court, in the landmark case of *Oposa v. Hon. Factoran, Jr*, 296 Phil. 694 (1993), pronounced:

"While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. x x x." *Id*. at 713.

[25] *Id*.

[26] *Id*.

[27] The whereas clause of PD No. 705 provides:

WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;

a *malum prohibitum* crime.[28] The commission of the prohibited act is the crime itself regardless of the intent of the doer.[29] Unless and until the Legislature amends PD No. 705, or a clear and categorical exemption from PD No. 705 is legislated, the conviction of the petitioners must be sustained. To reiterate, the Court cannot simply expand the implications of the provisions of IPRA to carve out an exception in favor of indigenous people, when such has not been clearly established by the intent of the Legislature.

Finally, with all due respect to the erudite disquisition of the *ponencia*, all is not lost for its pedagogical exhaustiveness that beckons for alternative standards that would give substance to the IP rights to preserve their cultural integrity, ancestral lands and ancestral domains, based on the exceptions to the generality principle of criminal laws. The application of the laws of preferential application, like the Constitution, IPRA, and other relevant laws advanced by the learned and esteemed jurists Senior Associate Justice Estela Perlas-Bernabe, Justice Marvic Leonen, Justice Alfredo Benjamin Caguioa, and the *ponente* herself, may sustain the acquittal of the petitioners. Also, the postulation of Justice Rodil Zalameda that there is

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WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;

WHEREAS, it is also imperative to place emphasis not only on the utilization thereof but more so on the protection, rehabilitation and development of forest lands, in order to ensure the continuity of their productive condition;

WHEREAS, the present laws and regulations governing forest lands are not responsive enough to support re-oriented government programs, projects and efforts on the proper classification and delimitation of the lands of the public domain, and the management, utilization, protection, rehabilitation, and development of forest lands;

[28] See *Aquino v. People*, 611 Phil. 442 (2009).

[29] *Id.*, citing *People v. Bayona*, 61 Phil. 181, 185 (1935); *People v. Ah Chong*, 15 Phil. 488, 500 (1910); and *U.S. v. Go Chico*, 14 Phil. 128, 132 (1909); Ramon C. Aquino, The Revised Penal Code, Vol. 1, 1987 ed., pp. 52-54.

lack of intent to perpetrate the act may be applied in favor of the petitioners. However, I am not convinced yet for the reasons stated above.

Accordingly, I vote to **DENY** the petition and affirm the conviction of the petitioners.

EN BANC

[G.R. No. 238882. January 5, 2021]

JUAN B. NGALOB, in his capacity as Vice-Chairman of the Regional Development Council - Cordillera Administrative Region [RDC-CAR] and former Regional Director of the National Economic and Development Authority-Cordillera Administrative Region (NEDA-CAR), HERMINIA B. SAMUEL, in her capacity as Regional Accountant, PATERNO C. LABOY, in his capacity as former Chief Administrative Officer, and ALL PAYEES IN THE PAYROLL (as recipients of the year-end incentives), *Petitioners, v.* **COMMISSION ON AUDIT,** *Respondent*.

APPEARANCES OF COUNSEL

Bulwayan, Bulwayan, Lud-Ayen & Ramon Law Offices for petitioners.

The Solicitor General for respondent.

D E C I S I O N

LOPEZ, *J.*:

This Petition for *Certiorari*[1] under Rule 64, in relation to Rule 65, of the Revised Rules of Court implores this Court to review respondent Commission on Audit's (COA) Decision No. 2016-335[2] dated November 9, 2016 and Resolution No. 2017-491[3] dated December 28, 2017.

Facts

On August 28, 2009, the Cordillera Administrative Region (CAR) - Regional Development Council (RDC) Executive

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[1] *Rollo*, pp. 23-45.

[2] *Id.* at 87-92.

[3] *Id.* at 50-54.

Committee (ExCom), headed by its Chairman, petitioner Juan B. Ngalob (Ngalob), issued RDC ExCom Resolution No. 73,[4] authorizing the grant of incentives covering January to June 2008, and quarterly releases for the third and fourth quarters of 2009 to compensate RDC-CAR officials and secretariat's "extra work" in implementing the RDC-CAR Work Program on Development and Autonomy. The CAR-RDC disbursed ₱1,095,000.00 for this purpose.

Similarly, on December 10, 2010, the RDC ExCom issued Resolution No. CAR-103,[5] providing for a year-end incentive to its officers and secretariat, in lieu of honoraria from the RDC Regional Development and Autonomy Fund, to recognize the considerable responsibilities and tasks related to regional autonomy that they undertook over and above their regular functions. This time, ₱1,080,000.00 was disbursed.

Upon audit, the incentives amounting to ₱1,095,000.00 were disallowed in Notice of Disallowance (ND) No. 11-001-101 (09)[6] dated April 13, 2011, while the year-end incentives amounting to ₱1,080,000.00 were disallowed in ND No. 11-005-101(10)[7] dated June 21, 2011, both for lack of legal basis. Petitioners were charged liable for the transactions in both NDs:[8]

Name	Position/Designation	Nature of Participation in the Transaction
Juan B. Ngalob	Regional Director	Approved the payment of Staff Incentive
Herminia B. Samuel	Reg'l Accountant	Certified that supporting documents are complete and proper
Paterno C. Laboy	Chief Admin. Officer	Certified that charges are necessary and lawful and supporting documents are valid, proper and legal
All payees in the payroll		Benefited as payees

[4] *Id.* at 55-56.

[5] *Id.* at 57-58.

[6] *Id.* at 59.

[7] *Id.* at 60.

[8] *Id.* at 59-60.

Ngalob appealed the NDs to the COA-CAR Director. In separate Letters[9] dated August 15, 2011, Ngalob explained that under the General Appropriations Act (GAA) of 2007, ₱15,000,000.00 was allocated for the RDC-CAR to pursue social preparation of the CAR into an autonomous region. As this task was not among the regular functions of the RDC under Executive Order (EO) No. 325, the RDC-CAR considered it as a special project or an extra work, the undertaking of which entitles its officials and employees to honoraria under Department of Budget and Management (DBM) Circular No. 2007-2[10] and Section 46(e)[11] of RA No. 9524[12] (2009 GAA) and Section 49(e)[13] of RA No. 9970[14] (2010 GAA). Ngalob

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[9] *Id.* at 61-63 and 64-66.

[10] "Guidelines on the Grant of Honoraria Due to Assignment in Government Special Projects."

[11] SEC. 46. *Honoraria*. — The respective agency appropriations for honoraria shall only be paid to the following:

x x x x

(e) Officials and employees assigned to special projects, subject to the following conditions:

(i) Said special projects are reform-oriented or developmental, contribute to the improvement of service delivery and enhancement of the performance of the core functions of the agency, and have specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year; and

(ii) Such assignment entails rendition of work in addition to, or over and above, their regular workload.

In these instances, rate of honoraria shall depend on the level of responsibilities, nature of work rendered, and extent of individual contribution to produce the desired outputs: PROVIDED, That total honoraria received from all special projects shall not exceed twenty-five percent (25%) of the annual basic salaries; x x x.

[12] AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND NINE, AND FOR OTHER PURPOSES; approved on March 12, 2009.

[13] SEC. 49. *Honoraria*. — The respective agency appropriations for honoraria shall only be paid to the following:

x x x x

also claimed that in the determination of the grant, the RDC-CAR was guided by factors laid down in DBM Circular No. 2007-2 such as the nature of work assignments, the level of difficulty of the duties assigned, the extent of productivity, and quality of performance in terms of completed and accepted deliverables in accordance with the timeframes set *per* project. Finally, Ngalob averred that the incentives were legally sourced from the budget allocated in the 2007 GAA in accordance with DBM Circular No. 2007-2.

In response, the Audit Team Leader maintained that the task of socially preparing the CAR towards autonomy was not a special project because the RDC-CAR was created under EO No. 30[15] precisely to carry out the purposes of the CAR's creation under EO No. 220,[16] *i.e.*, to "[p]repare for the establishment of the autonomous region in the Cordilleras,"[17] among others. The

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(e) Officials and employees assigned to special projects, subject to the following conditions:
(i) Said special projects are reform-oriented or developmental, contribute to the improvement of service delivery and enhancement of the performance of the core functions of the agency, and have specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year; and
(ii) Such assignment entails rendition of work in addition to, or over and above, their regular workload. In these instances, rate of honoraria shall depend on the level of responsibilities, nature of work rendered, and extent of individual contribution to produce the desired outputs: PROVIDED, That total honoraria received from all special projects shall not exceed twenty-five percent (25%) of the annual basic salaries; x x x.

[14] AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND TEN, AND FOR OTHER PURPOSES; approved on January 1, 2010.

[15] "Providing for a Regional Development Council in the Cordillera Administrative Region and for other Purposes;" approved on July 30, 2001.

[16] "Creating the Cordillera Administrative Region, Appropriating Funds Therefor and for other Purposes;" approved on July 15, 1987.

[17] Executive Order (EO) No. 220, Section 3 (c); signed on July 15, 1987.

Audit Team Leader also noted that the disallowed incentives were merely based on the RDC ExCom Resolution. This violates COA Decision No. 77-110, which states that the authority to grant additional, double, or indirect compensation to any elective or appointive public officer or employee under Article IX-B, Section 8[18] of the 1987 Constitution pertains to statutes passed by the Legislature. Moreover, under the New Government Accounting System (NGAS), incentives, honoraria, and other allowances are proper charges to the appropriation for Personal Services (PS). Here, the disallowed incentives were improperly charged against the agency's Maintenance and Other Operating Expenses (MOOE) allotment since there was no appropriation for the payment of incentives under the agency's PS account. Lastly, the COA Audit Team Leader explained that the amount given to each payee had no basis as the RDC-CAR erroneously relied upon DBM Circular No. 2007-02, which applies to honoraria and not incentives.[19]

COA-CAR Ruling

In its Decision No. 2012-35[20] dated August 31, 2012, the COA-CAR ruled that the social preparation of the CAR for autonomy is not an additional task, but a regular function of the RDC-CAR because it is in line with one of the functions of the RDCs under Section 4 (j) of EO No. 325,[21] *i.e.*, to "[p]erform other related functions and activities as may be necessary to promote and sustain the socio-economic development of the

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[18] SEC. 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, **unless specifically authorized by law**, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. Pensions or gratuities shall not be considered as additional, double, or indirect compensation. (Emphasis supplied.)

[19] *Rollo*, pp. 67-68.

[20] *Id.* at 132-137.

[21] "Reorganization of the Regional Development Councils [Repealing Executive Order No. 308, Series of 1987, as amended by Executive Order Nos. 318, (S. of 1988), 347 (S. of 1989), 455 (S. of 1991) and 505 (S. of 1992);" approved on April 12, 1996.

regions." The COA-CAR also affirmed that there was no appropriation for incentives or honoraria in the RDC-CAR's PS account under the 2009 and 2010 GAAs; hence, the incentives were illegally charged against the agency's MOOE. Further, the COA-CAR observed that while the RDC-CAR asserted that the incentives were given in lieu of honoraria, the basic requirements set forth for the grant of honoraria under Section 46(e)[22] of the 2009 GAA and Section 49(e)[23] of the 2010 GAA were not complied with. Aside from its general allegation that the incentives were gauged against factors provided in DBM Circular No. 2007-2, the RDC-CAR did not present proof of the approved plan of activities for the alleged special project and proof of target accomplishment and deliverables to support the grant of incentives. Lastly, the COA-CAR ruled that the RDC-CAR has no authority to grant additional allowances, incentives, or compensation.

In all, the COA-CAR found no factual and legal basis for the grant of the incentives and disposed as follows:

> WHEREFORE, the herein appeal is denied and the disallowances under ND No. 11-001-101(09) and ND No. 11-005-101(10) dated April 13, 2011 and June 21, 2011, respectively, are AFFIRMED.[24]

Aggrieved, Ngalob filed a Petition for Review[25] before the COA Proper, reiterating the same arguments. In addition, Ngalob invoked good faith and social justice in favor of labor to sustain the grant of the incentives.

COA Proper Ruling

In its Decision No. 2016-335[26] dated November 9, 2016, the COA Proper affirmed the COA-CAR Decision. The COA Proper

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[22] *Supra* note 11.

[23] *Supra* note 13.

[24] *Rollo*, p. 137.

[25] *Id.* at 77-86.

[26] *Id.* at 87-92.

also found Ngalob's plea of social justice, good faith, and liberal interpretation of the law unavailing due to the patent disregard of the basic and essential requirements of law, thus:

> **WHEREFORE**, premises considered, the petition is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit — Cordillera Administrative Region Decision No. 2012-35 dated August 31, 2012 and ND Nos. 11-001-101-(09) dated April 13, 2011 and 11-005-101-(10) dated June 21, 2011 on the payment of year-end incentives to Regional Development Council officials and National Economic and Development Authority - Cordillera Administrative Region employees for calendar years 2009 and 2010 in the amounts of [₱]1,095,000.00 and [₱]1,080,000.00, respectively, are **AFFIRMED**.[27] (Emphasis in the original.)

Ngalob's motion for reconsideration was likewise denied in the COA Proper Decision No. 2017-491:[28]

> **WHEREFORE**, premises considered, the Motion for Reconsideration of Mr. Juan B. Ngalob, former Vice Chairman, Regional Development Council (RDC) - Cordillera Administrative Region (CAR), and Regional Director, National Economic and Development Authority (NEDA) - CAR, et al., is hereby **DENIED** for lack merit. Accordingly, Commission on Audit (COA) Decision No. 2016-335 dated November 9, 2016, which denied the Petition for Review of COA-CAR Decision No. 2012-35 dated August 31, 2012 and affirmed Notice of Disallowance Nos. 11-001-101(09) dated April 13, 2011 and 11-005-101(10) dated June 21, 2011, on the payment of year-end incentives to RDC officials and NEDA-CAR employees for calendar years 2009 and 2010, in the amounts of [₱]1,095,000.00 and [₱]1,088,000.00, respectively, is **AFFIRMED**.
>
> The Prosecution and Litigation Office, Legal Services Sector, this Commission, is directed to forward the records of the case to the Office of the Ombudsman for investigation and filing of appropriate charges considering the possible violation of the provisions of the Revised Penal Code against the approving officers.[29]

Hence, this Petition, raising the following issues:

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[27] *Id.* at 91.

[28] *Id.* at 50-54.

[29] *Id.* at 52-53.

(1) Whether the COA acted with grave abuse of discretion in upholding the disallowance; and

(2) Whether the COA acted with grave abuse of discretion in affirming petitioners' liability.

Ruling

The Petition lacks merit.

Propriety of the Disallowance

At the outset, we emphasize the basic rule that the burden of proving the validity or legality of the grant of allowance, benefits, or compensation is with the government agency or entity granting, or the employee claiming them.[30] Here, petitioners cite DBM Circular No. 2007-2 and DBM Circular No. 2007-510[31] as authorization to grant incentives to their employees and officials for a special project that was allegedly undertaken. They argue that the mandate to pursue social preparation in the CAR for regional autonomy is a special project because it is not a part of the RDC-CAR's regular and permanent functions, entitling its officials and employees to additional incentives. They also claim that the grant was in accordance with the guidelines set forth in these circulars.

Petitioners are mistaken. The general averment of "pursuing social preparation of the CAR into an autonomous region" does not suffice to prove that a "project" was undertaken to warrant disbursements for the payment of honoraria. Paragraph 2.2 of DBM Circular No. 2007-2 defines a "special project" as "**a duly authorized** inter-office or intra-office **undertaking** of a composite group of government officials and employees which is not among the regular and permanent functions of their respective agencies. Such undertaking x x x is reform-oriented or developmental in nature, and is contributory to the

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[30] *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 331 (2015).

[31] "Guidelines on the Grant of Honoraria to the Governing Boards of Collegial Bodies," May 8, 2007.

improvement of service delivery and enhancement of the performance of the core functions of an agency or member agencies." Conformably, under the Administrative Code of 1987,[32] a "project" is defined as "a component of **a program covering a homogenous group of activities** that results in the accomplishment of an identifiable output,"[33] while a "'program' refers to the **functions and activities** necessary for the performance of a major purpose for which a government agency is established."[34] Paragraph 4.3 of DBM Circular No. 2007-2 is explicit in requiring that a special project plan should be "prepared in consultation with all personnel assigned to a project and approved by the department/agency/lead agency head," containing the following:

- title of the project;
- objectives of the project, including the benefits to be derived therefrom;
- outputs or deliverables per project component;
- project timetable;
- skills and expertise required;
- personnel assigned to the project and the duties and responsibilities of each;
- expected deliverables per personnel assigned to the project per project component at specified timeframes; and
- cost by project component, including the estimated cost for honoraria for each personnel based on man-hours to be spent in the project beyond the regular work hours; personnel efficiency should be a prime consideration in determining the man-hours required.

Moreover, paragraph 4.5 of DBM Circular No. 2007-2 was emphatic in requiring that:

> 4.5 Payment of honorarium shall be made **only upon completion and acceptance by the agency head of the deliverable per project component**. (Emphasis supplied.)

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[32] EO No. 292 (1987).

[33] EO No. 292 (1987), Book VI, Chapter I, Section 2(13).

[34] EO No. 292 (1987), Chapter 1, Book VI, Section 2(12).

Similar conditions for the grant of honoraria to officials and employees assigned to special projects are imposed in the 2009 and 2010 GAAs, *i.e.*, aside from the special project entailing rendition of additional work over and above their regular workload, the special project should be "reform-oriented or developmental, contribute[s] to the improvement of service delivery and enhancement of the performance of the core functions of the agency, **and ha[s] specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year**; x x x."[35]

In this case, while petitioners put forward an identifiable output, *i.e.*, to socially prepare the CAR for regional autonomy, only general principles on the concept of special project and honorarium were presented. Petitioners did not show any approved plan of activities or undertakings for the accomplishment of such goal. Despite several opportunities before the Audit Team, the COA-CAR, the COA Proper, and even before this Court, the RDC-CAR consistently disregarded its burden to prove the validity or legality of the disallowed incentives by failing to present an **approved special project plan** in accordance with paragraph 4.3 of DBM Circular 2007-2. Thus, absent a specific project and its supporting documents contemplated under the rules, we find no reason and basis to rule on whether such project can be considered as a regular function of the RDC-CAR.

Furthermore, even assuming that a legitimate special project was undertaken, the RDC-CAR failed to present a transparent and fair "**performance evaluation plan** that considers timeliness, quality outputs, and other applicable work efficiency determinants," required under paragraph 4.7[36] of DBM Circular No. 2007-2 to be the basis of the computation of the "honoraria."

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[35] Republic Act (RA) No. 9524, Section 46(e)(i); and RA No. 9970, Section 49(e)(i). (Emphasis supplied.)

[36] 4.7. For rating purposes, the project management shall formulate a performance evaluation plan that is transparent and fair, and considers timeliness, quality of outputs, and other applicable work efficiency determinants.

The 2009 and 2010 GAAs mandated that "the rate of honoraria [be dependent upon] the level of responsibilities, nature of work rendered, and extent of individual contribution to produce the desired outputs: PROVIDED, [t]hat [the] total honoraria received from all special projects shall not exceed [25%] of the annual basic salaries."[37] Petitioners failed to adduce evidence of accomplishments or deliverables upon which the computation of incentives may have been based. Interestingly, RDC ExCom Resolution No. CAR-103 itself required the RDC secretariat to make a determination of the incentives on the basis of additional tasks given to the RDC staff and officers, the burden of accountability, and other criteria that the secretariat head deemed appropriate.[38] Yet, the records bare no proof that the secretariat complied with such determination before petitioners-officers approved and certified the release of the incentives granted.

What is more, the COA appropriately observed that the disallowed incentives were illegally charged against the agency's MOOE as there was no specific appropriation in the RDC-CAR's PS account under the 2009 and 2010 GAAs for the payment of honoraria or incentives to officers and employees assigned to a special project. All government agencies were prescribed to use the NGAS effective January 1, 2002 under COA Circular No. 2001-004.[39] The NGAS Manual provides that "basic pay, all authorized allowances bonus, cash gifts, incentives and other personnel benefits of officials and employees of the government" are expenses chargeable against the agency's PS account, not the MOOE, which only "include expenses necessary for the regular operations of an agency like, among others, travelling expenses, training and seminar expenses, water, electricity, supplies expense, maintenance of property, plant and equipment,

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[37] RA No. 9524, Section 46(e); RA No. 9970, Section 49(e)(ii); and DBM Circular No. 2007-2, paragraph 4.9.

[38] *Rollo*, p. 58.

[39] October 30, 2001.

and other maintenance and operating expenses."[40] Concomitantly, DBM Circular No. 2007-2 provides that the amounts necessary for payment of honoraria shall be "charged against [the national government agencies'] respective appropriations in the annual GAA."[41] As well, DBM Circular No. 2007-510 provides that the honoraria should be "charged against the appropriations for the purpose in the annual GAA."[42] Thus, the COA correctly ruled that these DBM circulars necessarily required that there should have been a specific appropriation for incentives or honoraria under the RDC-CAR's PS account in the 2009 and 2010 GAAs. This is consistent with Section 29(1), Article VI of the 1987 Constitution which firmly declares that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." We have explained before that this constitutional edict requires that the GAA be purposeful, deliberate, and precise in its provisions and stipulations. The requirement under the DBM circulars that the amounts to fund the honoraria were to be appropriated by the GAA only meant that such funding must be purposefully, deliberately, and precisely included in the GAA.[43] Hence, Section 57[44] of the

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[40] COA Circular No. 2002-002 (2002), Volume III, Chapter 1 Section 7(a) and (b).

[41] DBM Circular No. 2007-2, par. 5.1.

[42] DBM Circular No. 2007-510, par. 6.1.

[43] See *Nazareth v. Hon. Villa, et al.*, 702 Phil. 319, 338 (2013).

[44] SEC. 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 EO No. 292, and to appropriate criminal action under existing penal laws. (Emphasis supplied.)

2009 GAA and Section 58[45] of the 2010 GAA state that **even the grant of personnel benefits authorized by law shall be deemed unauthorized if not supported by specific appropriations**.

In sum, we find no grave abuse of discretion that can be imputed against the COA in affirming the NDs. The RDC-CAR utterly failed to discharge its burden to establish the legal and factual basis of its grant of incentives in 2009 and 2010.

Liability to Refund the Disallowed Amounts

In the recent case of *Madera v. Commission on Audit*,[46] the Court clarified the jurisprudential variations in the refund of disallowed amounts and formulated rules for the liabilities of the persons involved, *viz.*:

> *E. The Rules on Return*
>
> x x x x
>
> 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.

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[45] SEC. 58. *Personal Liability of Officials or Employees for Payment of Unauthorized Personal Services Cost*. — No official or employee of the National Government, GOCCs and LGUs, 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 in accordance with Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of EO No. 292, and to appropriate criminal action under existing penal laws. (Emphasis supplied.)

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

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

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

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

The civil liability of approving or certifying officers provided under Sections 38[47] and 39,[48] Chapter 9, Book I of the Administrative Code of 1987, and the treatment of such liability as solidary under Section 43,[49] Chapter 5, Book VI of the

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[47] SEC. 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.

[48] SEC. 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.

[49] SEC. 43. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving

same Code, are grounded upon the manifest bad faith, malice, or gross negligence of public officers, who have in their favor the presumption of good faith and regularity in the performance of official duty.[50] On the other hand, the payees' obligation in a disallowed transaction is grounded upon the civil law principles of *solutio indebiti*[51] and unjust enrichment.[52] Thus, while the officers' good faith or bad faith is determinative of their liability, such state of mind is immaterial with regard to the recipients' obligation to return in disallowance cases. By way of exception, the recipients do not incur liability to refund when they can prove their entitlement to what they received as a matter of fact and law because in such situation, there is no undue payment and the government incurs no loss. Additionally, certain justifications that may excuse a recipient's liability to return may be recognized such as undue prejudice, social justice considerations, and other *bona fide* exceptions **depending on the purpose and nature of the disallowed amount relative to the attending circumstances**.[53]

In this case, no badge[54] of good faith can be appreciated in favor of the approving and certifying officers considering the

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such payment shall he jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing, by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

[50] *Blaquera v. Alcala*, 356 Phil. 678, 765 (1998).

[51] CIVIL CODE, Art. 2154. 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.

[52] CIVIL CODE, Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[53] *Madera v. Commission on Audit, supra* note 46.

[54] (1) Certificates of Availability of Funds pursuant to Section 40 of the

blatant disregard of the rules and laws that they themselves invoked and relied upon. By jurisprudence, the palpable disregard of laws and other applicable directives amounts to gross negligence which betrays the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.[55] Hence, the approving and certifying officers are solidarily liable to refund the disallowed amount.

As for the payees, petitioners cite the case of *Silang, et al. v. Commission on Audit*,[56] wherein the Court considered the payees' good faith to justify the excuse of their liability in the disallowed transaction. To stress, we have exhaustively elucidated in *Madera* that such justification is unwarranted because mere receipt of public funds without valid basis or justification, regardless of good faith or bad faith, is already undue benefit that gives rise to the obligation to return what was unduly received. Notably, petitioners failed to proffer evidence of actual service rendered or work accomplished to rationalize the incentives received. Neither is there any genuine and *bona fide* justification that would warrant the application of equitable considerations to absolve the recipients' civil obligation to the government. Thus, all the recipients are individually liable to return the amounts that they received.

FOR THESE REASONS, the Petition is **DISMISSED**. Decision No. 2016-335 dated November 9, 2016 and Resolution No. 2017-491 dated December 28, 2017 of the Commission on Audit are **AFFIRMED with MODIFICATION**. The approving and certifying officers are solidarily liable for the return of the

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Administrative Code, (2) in-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality. *Id.*

[55] *Tetangco, et al. v. Commission on Audit*, 810 Phil. 459, 467 (2017); *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, 821 Phil. 117, 140 (2017).

[56] 769 Phil. 327, 346 (2015).

disallowed incentives, while all payees are individually liable to return the amounts that they received.

SO ORDERED.

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

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Evident Premeditation — The elements of evident premeditation are: (1) a previous decision by the accused to commit the crime; (2) overt act/acts manifestly indicating that the accused clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of his acts; facts regarding "how and when the plan to kill was hatched" are indispensable; the requirement of deliberate planning should not be based merely on inferences and presumptions but on clear evidence. (People *v.* Aguila; G.R. No. 238455; Dec. 9, 2020) p. 308

Minority and Relationship — To justify the imposition of the death penalty under the provision, the twin circumstances of minority and relationship must be alleged in the *Information* and proved during the trial; in this case, AAA's minority was alleged in the *Information* and proven by the prosecution's documentary evidence that she was born on September 20, 1999; she was under the age of 18 when she was sexually abused by accused-appellant in 2012; her relationship with the accused-appellant, however, as properly observed by the RTC, was not specified in the *Information*. (People *v.* Padin; G.R. No. 250418; Dec. 9, 2020) p. 558

Quantum of Evidence for Qualifying Circumstance — It is established that qualifying circumstances must be proven with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt. (People *v.* Aguila; G.R. No. 238455; Dec. 9, 2020) p. 308

Treachery — The Court held that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time. (People *v.* Aguila; G.R. No. 238455; Dec. 9, 2020) p. 308

APPEALS

Changes of Theory or Position on Appeal — As to the alleged participation of the COA and the DA in the procurement, this was unsubstantiated, and raised for the first time; this contravenes the rule that "a party is not permitted to change his theory on appeal, for to allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process." (Atty. Turiano *v.* Task Force Abono, Field Investigation Office (FIO) – Office of the Ombudsman, represented by Leonardo R. Nicolas, Jr.; G.R. No. 222998; Dec. 9, 2020) p. 210

— It is well-settled in this jurisdiction that points of law, theories, issues and arguments not brought to the attention of the lower court need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage; basic considerations of fairness and due process impel this rule. (*Id.*)

Effect of Appeal by Any of Several Accused — A favorable judgment benefits an accused who did not appeal. (Sama, *et al. v.* People; G.R. No. 224469; Jan. 5, 2021) p. 614

Factual Findings of Trial Courts — It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears from the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. (People *v.* Aguila; G.R. No. 238455; Dec. 9, 2020) p. 308

Petition for Review on Certiorari Under Rule 45 — As a general rule, only questions of law may be reviewed by this Court in a petition for review on *certiorari* under Rule 45; in fact, "a question that invites a review of the factual findings of the lower tribunals is beyond the scope of this Court's power of review and generally justifies the dismissal of the petition, except in cases where there was serious misappreciation of facts on the part of the lower courts." (BSM Crew Service Centre Philippines, Inc. *v.* Jones; G.R. No. 240518; Dec. 9, 2020) p. 324

— To determine whether a conflict of interests exists, it is necessary to first ascertain whether there is a lawyer-client relationship. (*Id.*)

Dishonesty and Deceitful Conduct — Failure to pay debts despite repeated demands constitutes dishonest and deceitful conduct; prompt payment of financial obligations is one of the duties of a lawyer; this is in accord with his mandate to faithfully perform at all times his duties to society, to the bar, to the courts and to his clients. (Buenaventura *v.* Atty. Gille; A.C. No. 7446; Dec. 9, 2020) p. 1

Duties of Lawyers — Lawyers are required to maintain, at all times, a high standard of legal proficiency, and to devote their full attention, skill and competence to their cases, regardless of their importance, and whether they accept them for a fee, or for free. (Quitazol *v.* Atty. Capela; A.C. No. 12072; Dec. 9, 2020) p. 27

— Whenever lawyers take on their client's causes, they pledge to exercise due diligence in protecting the client's rights; their failure to exercise that degree of vigilance and attention expected of a good father of a family makes them unworthy of the trust reposed in them by their client and make them answerable to their client, the courts and society. (*Id.*)

— Atty. Taningco is reminded of his duty as a lawyer to observe and maintain the respect due to the courts and judicial officers; he should avoid using offensive or menacing language or behavior before the court and refrain from attributing to a judge motives that are not supported by the record or have no materiality to the case; the utmost respect due to courts and their officers is enshrined not only in the Lawyer's Oath, but also under Canon 11 and Rule 11.04 of the Code of Professional Responsibility. (Taningco, *et al. v.* Fernandez, *et al.;* G.R. No. 215615; Dec. 9, 2020) p. 147

Good Moral Character — Possession of good moral character is not only required of those who aspire to be admitted

Negligence — A lawyer's neglect of a legal matter entrusted to him constitutes inexcusable negligence for which he must be held administratively liable; from the perspective of ethics in the legal profession, a lawyer's lethargy in carrying out his duties is both unprofessional and unethical; Rule 18.03, Canon 18 of the CPR embodies this principle. (Quitazol *v.* Atty. Capela; A.C. No. 12072; Dec. 9, 2020) p. 27

Practice of Law — A lawyer must "remain a competent, honorable, and reliable individual in whom the public reposes confidence; any gross misconduct that puts his moral character in serious doubt renders him unfit to continue in the practice of law." (Buenaventura *v.* Atty. Gille; A.C. No. 7446; Dec. 9, 2020) p. 1

— It cannot be overemphasized that the practice of law is a profession; it is a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character; when a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the client's interests, and take all steps, or do all acts necessary. (Quitazol *v.* Atty. Capela; A.C. No. 12072; Dec. 9, 2020) p. 27

Service of Notice to Counsel — When a party is represented by counsel of record, service of orders and notices must be made upon said attorney; notice sent to counsel of record binds the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment, valid and regular on its face. (Taningco, et al. *v.* Fernandez, et al.; G.R. No. 215615; Dec. 9, 2020) p. 147

Willful Disobedience to Lawful Orders — Lawyer who defies without any valid reason the orders and processes of the Integrated Bar of the Philippines violates the lawyer's oath; in *Domingo v. Sacdalan*, the Court emphasized that a member of the Bar must give due respect to the

— It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created like herein respondent 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. (*Id.*)

Reglementary Period — Receipt of the denial of the motion for reconsideration does not grant a fresh period to file a petition for *certiorari* and the same must be filed within the remaining period, which shall not be less than five (5) days. (The Officers and Employees of Iloilo Provincial Government *v.* COA; G.R. No. 218383; Jan. 5, 2021) p. 590

— The reglementary period is interrupted by the filing of a motion for reconsideration before the COA. (*Id.*)

CHILD ABUSE

Essential Elements of the Offense — Reduced to its elements, sexual abuse under Section 5(b), Article III of R.A. No. 7610 presupposes the concurrence of the following: the accused commits the act of sexual intercourse or lascivious conduct; the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and the child, whether male or female, is below 18 years of age. (People *v.* Manuel; G.R. No. 242278; Dec. 9, 2020) p. 374

Other Sexual Abuse — By "other sexual abuse" is meant to cover not only a child who is abused for profit, but also in cases where a child was engaged in lascivious conduct through the coercion or intimidation by an adult; intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime, taking into consideration the age, size and strength of the parties; intimidation need not be irresistible; it suffices that some form of compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the victim. (People *v.* Manuel; G.R. No. 242278; Dec. 9, 2020) p. 374

competitive examination; since the type of competitive examination an individual must take to enter into a second level career service position is unspecified, the CSC is given a wide latitude of discretion to determine the type of competitive examination with the end goal of promoting morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. (*Id.*)

— One of these competitive examinations is the Fire Officer Examination (FOE); examinees who successfully hurdle the FOE, like Claveria, obtain a Fire Officer Eligibility, which is a second level eligibility "specific and appropriate for appointment to second level ranks in the fire protection service and functionally related positions only, except for ranks under the Philippine National Police." (*Id.*)

— Without questioning the expertise of the CSC in creating qualification standards for the civil service, a Fire Officer Eligibility is more appropriate and relevant for the position of a Special Investigator III in the BFP; the topics covered by the Fire Officer Examination are more attuned to the duties and responsibilities of a Special Investigator III in the BFP vis-a-vis the general concepts covered by a career service professional/second level eligibility. (*Id.*)

CLERKS OF COURT

Conduct — A Clerk of Court is expected to live up to the strictest standards of honesty and integrity, and must adhere to the high ethical standards expected of court employees. (Re: Report on the Financial Audit Conducted in the Municipal Trial Court, Labo, Camarines Norte; [Formerly A.M. No. 18-04-42-MTC]; A.M. No. P-21-4102; Jan. 5, 2021) p. 572

Dishonesty — The clerk of court's act of misappropriating court funds, as evidenced by the shortages her accounts, by delaying or not remitting or delaying the deposit of the court collections within the prescribed period constitutes dishonesty which is an act unbecoming of a court personnel. (Re: Report on the Financial Audit

functions would destroy public accountability and effectively weaken the faith of the people in the justice system. (*Id.*)

— It is well-settled that Clerks of Court are tasked with the collections of court funds; as they are not authorized to keep funds in their custody, they are duty bound to immediately deposit with authorized government depositories their collections on various funds; such functions are highlighted by OCA Circular Nos. 50-95 and 113-2004 and Administrative Circular No. 35-2004 which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same. (*Id.*)

Gross Neglect of Duty and Gross Dishonesty ¯ Incurring shortages in fiduciary collections and delay in the remittance of such collections in violation of COA-DOF Joint Circular No. 1-81, OCA Circular No. 50-95 and SC A.C. No. 3-2000 constitute gross dishonesty and gross neglect of duty, which are punishable with dismissal from the service. (Re: Report on the Financial Audit Conducted in the Municipal Trial Court, Labo, Camarines Norte; [Formerly A.M. No. 18-04-42-MTC]; A.M. No. P-21-4102; Jan. 5, 2021) p. 572

Misappropriation of Court's Funds ¯ Unjustified failure of the clerk of court to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that she has put such missing funds to personal use. (Re: Report on the Financial Audit Conducted in the Municipal Trial Court, Labo, Camarines Norte; [Formerly A.M. No. 18-04-42-MTC]; A.M. No. P-21-4102; Jan. 5, 2021) p. 572

Violation of the Court's Circulars and Issuances ¯ Failure to deposit court collections on time, update the entries in the official cashbooks, and regularly submit monthly reports constitute a violation of the court's circulars and issuances. (Re: Report on the Financial Audit Conducted in the Municipal Trial Court, Labo, Camarines Norte; [Formerly A.M. No. 18-04-42-MTC]; A.M. No. P-21-4102; Jan. 5, 2021) p. 572

COMMISSION ON AUDIT (COA)

— Pursuant to the exercise of its powers and functions, the COA has the exclusive authority, subject to limitations, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties. (*Id.*)

— The COA is vested by the Constitution with the power, authority, and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis. (*Id.*)

COMMISSION ON ELECTIONS (COMELEC)

Powers — The COMELEC is vested with the constitutional power and function to "enforce and administer all laws and regulations relative to the conduct of an election"; among its powers is the promulgation of rules and regulations of election laws; it exercises discretion on how certain aspects of elections are implemented. (AES Watch, *et al. v.* Commission on Elections [COMELEC]; G.R. No. 246332; Dec. 9, 2020) p. 510

CORPORATIONS

Goodwill — Goodwill has also been referred to as "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or common celebrity, or reputation for skill, or affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient

seized items must be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs or drug paraphernalia must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination. (Cuico *v.* People; G.R. No. 232293; Dec. 9, 2020) p. 257

— In the cases of *People v. Jimenez*, *People v. Malazo*, *People v. Pantallano*, *People v. Sampa*, and *People v. Claudel*, the Court acquitted the respective accused therein, on reasonable doubt, because the police officers failed to comply with all of the requirements of Section 21; following the foregoing cases, Cuico should perforce be acquitted because the police officers in this case failed to comply with the mandatory requirements of Section 21; the police officers should have submitted the drug paraphernalia for forensic examination. (*Id.*)

— Strict compliance with the requirements is necessary in protecting the integrity and identity of the *corpus delicti*, without which the crime of the illegal sale, or illegal possession of dangerous drugs or drug paraphernalia cannot be proved beyond reasonable doubt; non-compliance with Section 21 is tantamount to a failure to establish an essential element of the crime and will therefore engender the acquittal of the accused. (*Id.*)

Illegal Possession of Drug Paraphernalia — While it is true that Section 12 of R.A. No. 9165 punishes the possession of drug paraphernalia, it does not mean that forensic testing may completely be dispensed with; Section 11 of R.A. No. 9165, for instance, also punishes the possession of dangerous drugs, but it must first be proven that what the accused possessed was indeed dangerous drugs; in prosecutions involving Section 12 of R.A. No. 9165,

Donation Mortis Causa and Donation Inter Vivos, Distinguished — Donation *inter vivos* differs from donation *mortis causa* in that in donation *inter vivos*, the donation takes effect during the donor's lifetime or independently of the donor's death and must be executed and accepted with the formalities prescribed by Articles 748 and 749 of the Civil Code; however, if the donation is made in contemplation of the donor's death, meaning that full or naked ownership will pass to the donee only upon the donor's death, then, it is a donation *mortis causa*, which should be embodied in a last will and testament. (Heirs of Fedelina Sestoso Estella represented by Virgilia Estella Poliquit, *et al. v.* Estella, *et al.;* G.R. No. 245469; Dec. 9, 2020) p. 465

DUE PROCESS

Administrative Due Process — A respondent who was furnished with the proper administrative complaint and pertinent documents and actively participated in the hearings cannot claim violation of the right to due process. (Atty. Turiano *v.* Task Force Abono, Field Investigation Office (FIO) – Office of the Ombudsman, represented by Leonardo R. Nicolas, Jr.; G.R. No. 222998; Dec. 9, 2020) p. 210

ELECTIONS

iButton Security Key (iButton) — The *Capalla v. COMELEC* ruling is clear that the PCOS machines are capable of digitally-signed transmissions; a digital signature requires private and public keys; in the case of PCOS machines, algorithms generate these keys and the method of comparing these keys; the private key in the electronic transmission of results and the public key possessed by COMELEC must match to consider the electronic transmission of results as an official election return; the private key is generated when the members of the electoral board use their respective iButtons and input their respective PINs on the voting machines. (AES Watch, *et al. v.* Commission on Elections (COMELEC); G.R. No. 246332; Dec. 9, 2020) p. 510

the employee to submit his or her written explanation within a reasonable period from the receipt of notice; c) the employer must give the employee an ample opportunity to be heard which may be in the form of a hearing when so requested by the employee or otherwise required by the company rules; and d) the employer must serve a notice informing the employee of his or her dismissal. (*Id.*)

Loss of Trust and Confidence — A dismissal based on willful breach of trust or loss of trust and confidence places upon the employer the burden to establish two conditions: the first, is that the employee terminated must occupy a position of trust and confidence, that is, either a managerial employee or a fiduciary rank-and-file employee, who in the normal exercise of his or her functions, regularly handles significant amount of money or property; the second condition demands the existence of an act justifying the loss of trust and confidence. (International Container Terminal Services, Inc., *et al. v.* Ang; G.R. No.238347; Dec. 9, 2020) p. 291

(Paez *v.* Marinduque Electric Cooperative, Inc., *et al.*; G.R. No. 211185; Dec. 9, 2020) p. 291

— An actual breach of duty committed by a managerial employee is a sufficient basis for the employer's loss of trust and confidence. (*Id.*)

— Jurisprudence distinguishes between the proof required to substantiate dismissal on the ground of loss of trust and confidence for managerial employees on the one hand and rank-and-file personnel on the other; in the case of a managerial employee, "mere existence of a basis for believing that he has breached the trust of his employer" is enough; there need only be some basis for the loss of confidence as when the employer has a reasonable ground to believe that the employee concerned is responsible for the purported misconduct and the nature of his participation therein; whereas, with respect to rank-and-file employees, there must be proof of involvement in

de minimis, but substantial, serious and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employee/s concerned and the DOLE at least one month before the intended date of retrenchment; (3) the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) the employer exercises its prerogative to retrench in good faith; and (5) the employer uses fair and reasonable criteria in ascertaining who would be retrenched or retained. (*Id.*)

— Retrenchment is the termination of employment initiated by the employer through no fault of, and without prejudice to the employees; it is a management prerogative resorted to avoid or minimize business losses during periods of recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, or conversion of the plant. (*Id.*)

— The first requirement to implement a valid retrenchment program is to present proof that it is reasonably necessary, and is likely to prevent business losses which are substantial, serious, real, and not merely de minimis in extent; if the losses purportedly sought to be forestalled by retrenchment are proven to be insubstantial and inconsequential, the *bona fide* nature of the retrenchment would be in doubt; over time, jurisprudence has expanded the concept of "substantial business losses"; in *Lambert Pawnbrokers and Jewelry Corp., et al. v. Binamira,* it was stressed that a mere decline in a company's gross income does not constitute a substantial business loss that would warrant retrenchment. (*Id.*)

— To afford full protection to labor, the employer's prerogative to bring down labor costs through retrenchment must be exercised carefully and as a measure of last resort; even though a company may have sustained losses, still, retrenchment is not justified absent any showing that it was adopted as a measure of last recourse; the employer must prove that the retrenchment is

EVIDENCE

Certified Copy — Following Section 8, Rule 130 of the Rules of Court, "when the original of the document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof." (Guerrero *v.* Phil. Phoenix Surety & Insurance, Inc.; G.R. No. 223178; Dec. 9, 2020) p. 230

Competent Witness to Identify a Photograph — While We have allowed witnesses, other than the person who took the photograph, to identify pictures presented in evidence, the said witness must be competent to identify the photograph as a faithful representation of the object portrayed; a competent witness must be able to "assure the court that they know or are familiar with the scenes or objects shown in the pictures and the photographs depict them correctly." (Guerrero *v.* Phil. Phoenix Surety & Insurance, Inc.; G.R. No. 223178; Dec. 9, 2020) p. 230

Photographs — As this Court held, "photographs, when presented in evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced"; this requirement for admissibility was similarly stated in Section 1, Rule 11 of the Rules on Electronic Evidence when it required photographic evidence of events to be "identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof." (Guerrero *v.* Phil. Phoenix Surety & Insurance, Inc.; G.R. No. 223178; Dec. 9, 2020) p. 230

Police Blotter — A police blotter entry, or a certification thereof, is admissible in evidence as an exception to the hearsay rule under Section 46, Rule 130 of the Rules of Court; in order for it to be admissible, the said evidence must be properly presented in evidence; what must have been presented in evidence was either the police blotter itself or a copy thereof certified by its legal keeper. (Guerrero *v.*

being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. (*Id.*)

FOREST LANDS OR FOREST PRODUCTS

— It is a general principle in law that in *malum prohibitum* case, good faith or motive is not a defense because the law punishes the prohibited act itself; the penal clause of Section 77 of P.D. No. 705, as amended punishes the cutting, collecting, or removing of timber or other forest products only when any of these acts is done without lawful authority from the State. (Sama, *et al. v.* People; G.R. No. 224469; Jan. 5, 2021) p. 614

— Petitioners relied upon their elders, the non-government organization that was helping them, and the NCIP, that they supposedly possessed the State authority to cut and collect the *dita* tree as IPs for their indigenous community's communal toilet; thus, the intent and volition to commit the prohibited act without lawful authority was rendered reasonably doubtful. (*Id.*)

— Section 3(d) of P.D. No. 705, as amended defines forest lands as including the public forest, the permanent forest or forest reserves, and forest reservations; Section 3(c) defines alienable and disposable lands as "those lands of the public domain which have been the subject of the present system of classification and declared as not needed for forest purposes." (*Id.*)

— Section 3 (mm) defines private lands indirectly as those lands with titled rights of ownership under existing laws, and in the case of national minority, lands subject to rights of possession existing at the time a license is granted under P.D. No. 705, which possession may include places of abode and worship, burial grounds, and old clearings, *but exclude* productive forests inclusive of logged-over areas, commercial forests, and established plantations of the forest trees and trees of economic values. (*Id.*)

— Section 77 of P.D. No. 705, as amended, punishes, among others, "any person who shall cut, gather, collect, remove

timber or other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority ... shall be punished with the penalties imposed under Articles 309 and 310 of the Revised Penal Code...." (*Id.*)

— Section 77 requires prior authority for any of the acts of cutting, gathering, collecting, removing timber or other forest products even from those lands possessed by IPs falling within the ambit of the statute's definition of private lands. (*Id.*)

— Section 77's reference to forest lands and even alienable and disposable public lands *could have also* encompassed ancestral domains and lands; this is because laws were subsequently passed converting some of the lands through the open, continuous, exclusive, and notorious occupation and cultivation of IPs (*then stereotypically referred to as members of the national cultural communities*) by themselves or through their ancestors into alienable and disposable lands of the public domain. (*Id.*)

— The *dita* tree was intended for constructing a communal toilet; it therefore qualifies beyond reasonable doubt as timber pursuant to Section 77. (*Id.*)

— The elements for violation of Section 77 are: 1) the accused cut, gathered, collected or removed timber or other forest products; 2) *the timber or other forest products cut, gathered, collected or removed* belongs to *the government or to any private individual*; and 3) the cutting, gathering, collecting or removing was without any authority granted by the State. (*Id.*)

GOVERNMENT EXPENDITURES OR DISBURSEMENTS

Allowances, Benefits, and Incentives of the Personnel of Government-Owned or-Controlled Corporations (GOCCs) — The Court already ruled that R.A. No. 1169 or the Philippine Charity Sweepstakes Office (PCSO) Charter, does not grant its Board the unbridled authority to fix salaries and allowances of its officials and employees;

PCSO is still duty bound to observe pertinent laws and regulations on the grant of allowances, benefits, incentives and other forms of compensation; the power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives are still subject to the review of the DBM. (Philippine Charity Sweepstakes Office, *et al. v.* Commission on Audit; G.R. No. 243607; Dec. 9, 2020) p. 407

— The only allowances which government employees can continue to receive in addition to their standardized salary rates are the following: (1) representation and transportation allowances (RATA); (2) clothing and laundry allowances; (3) subsistence allowance of marine officers and crew on board government vessels; (4) subsistence allowance of hospital personnel; (5) hazard pay; (6) allowance of foreign service personnel stationed abroad; and (7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM. (*Id.*)

— There can be no diminution of benefits since the allowances granted by PCSO to its officials and employees are not in accordance with prevailing laws and the payment thereof was due to an error in the construction or application of the law; the Court has steadily held that, in accordance with Section 12 of R.A. No. 6758, allowances, fringe benefits, or any additional financial incentives, whether or not integrated into the standardized salaries prescribed by R.A. No. 6758, should continue to be enjoyed by employees who were incumbents and were actually receiving those benefits as of July 1, 1989. (*Id.*)

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on Audit, Commission Proper, *et al.;* G.R. No. 241394; Dec. 9, 2020) p. 336

— The approving and certifying government officials are solidarily liable to return the disallowed amounts only when they acted in evident bad faith, with malice, or gross negligence. (Power Sector Assets and Liabilities Management (PSALM) Corporation Represented by Irene J. Besido—Garcia, in her Capacity as President and Chief Executive Officer (CEO), *et al. v.* Commission on Audit; G.R. No. 245830; Dec. 9, 2020) p. 482

Persons Liable for Unlawful Expenditures — Officers involved only in the appraisal of the properties and in the preparation of the documents are excluded from the obligation to refund the amounts covered by the NDs. (Menzon, *et al. v.* Commission on Audit, Commission Proper, *et al.;* G.R. No. 241394; Dec. 9, 2020) p. 336

— The Court summarized the rules regarding the liability of the certifying and approving officers and recipient employees, thus:

E. The Rules on Return.

In view of the foregoing discussion, the Court pronounces:

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

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

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

(b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarity liable to return

as cited by the Court in the case of *Madera*, includes payees who can show that the amounts received were granted in consideration for services actually rendered, or when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant; the Court further said that the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will have to be done by the Court on a case-to-case basis. (Philippine Charity Sweepstakes Office, *et al. v.* Commission on Audit; G.R. No. 243607; Dec. 9, 2020) p. 407

— As to the recipients of the disallowed benefits, the Court already settled this issue of whether the officials and employees of the disallowed transactions should be held accountable and be ordered to refund the disallowed amount in the recent case of *Madera v. COA*. (*Id.*)

Requisites for One to be Absolved of Liability for Unlawful Expenditure — For one to be absolved of liability the following requisites may be considered: (1) a certificate of availability of funds, pursuant to Section 40 of the Administrative Code; (2) an in-house or a Department of Justice legal opinion; (3) lack of jurisprudence disallowing a similar case; (4) the issuance of the benefit is traditionally practiced within the agency and no prior disallowance has been issued; and (5) on the question of law, that there is a reasonable textual interpretation on the expenditure or benefit's legality. (Power Sector Assets and Liabilities Management (PSALM) Corporation Represented by Irene J. Besido—Garcia, in her Capacity as President and Chief Executive Officer (CEO), *et al. v.* Commission on Audit; G.R. No. 245830; Dec. 9, 2020) p. 482

Salary Integration Rule — The subject benefits and allowances are already integrated in basic salary and are without doubt proscribed allowances pursuant to R.A. No. 6758; since the benefits and allowances are not among those expressly excluded from integration by R.A. No. 6758,

— Even pending the conversion of a Certificate of Ancestral Domain Claim (CADC) to Certificate of Ancestral Domain Title (CADT), a possessor of a CADC has the right to the exclusive communal use and occupation of an ancestral domain. (*Id.*)

Identification of Indigenous People (IP) — The Barangay Captain who is knowledgeable of the territory and the people of his barangay is competent to identify the Iraya-Mangyan indigenous people (IP) Residents within his barangay. (Sama, *et al. v.* People; G.R. No. 224469, Jan. 5, 2021) p. 614

— Under the Indigenous People's Rights Act of 1997 (IPRA), the National Commission on Indigenous Peoples (NCIP) is the lead government agency for the protection, promotion, and preservation of Indigenous People/ Indigenous Cultural Communities (IP/ICC) identities and rights in the context of national unity; it has the primary jurisdiction to identify ICCs and IPs; its Legal Affairs Office is mandated to represent and provide legal assistance to them. (*Id.*)

IP's Rights — An IP right to preserve cultural integrity is manifested through an activity that is an element of a practice, custom, or tradition that is integral to the distinctive culture of the IPs claiming the right; an IP right to preserve cultural integrity entitles the right holder to perform the practice or custom or tradition in its present form. (Sama, *et al. v.* People; G.R. No. 224469; Jan. 5, 2021) p. 614

— Conceptually, IP rights fall along a spectrum; at one end, there are those IP rights which are *practices, customs, and traditions integral to the distinctive IP culture* of the group claiming the right; in the middle, there are activities which take place on land and indeed, might be intimately related to a particular piece of land; at the other end of the spectrum, there is the IP title itself. (*Id.*)

— The 1987 Constitution insures "the right of tribal Filipinos to preserve their way of life." (*Id.*)

and confidence in the judiciary, lowers its standards and brings it to disrepute. (Office of the Court Administrator *v.* Hon. Atienza-Turla, Presiding Judge, Br. 40, RTC, Palayan City, Nueva Ecija; A.M. No. RTJ-21-005 [formerly A.M. No. 20-11-161-RTC]; Dec. 9, 2020) p. 61

— Judges burdened with heavy caseloads should request the Court for an extension of the reglementary period within which to decide their cases if they think they cannot comply with their judicial duty. (*Id.*)

— Time and again, the Court has emphasized that the office of a judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties; failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of Article III, Section 16 of the Constitution, which guarantees the right to speedy disposition of cases. (*Id.*)

— The failure to render decisions and orders within the mandated period constitutes a violation of Canon 3, Rule 3.05 of the Code of Judicial Conduct; Section 9, Rule 140 of the Revised Rules of Court classifies undue delay in rendering a decision or order as a less serious charge punishable under Section 11(B) of the same Rule. (*Id.*)

Duties of Judges — Being a magistrate means comporting oneself in a manner consistent with the dignity of the judicial office, and not committing any act that erodes public confidence in the Judiciary; as the embodiment of the people's sense of justice, a judge must be studiously careful to avoid even the slightest infraction of the law, lest it be a demoralizing example to others. (AAA *v.* Judge Contreras, RTC, Br. 25, Naga City, Camarines Sur; A.M. No. RTJ-15-2437 [formerly OCA IPI No. 14-4351-RTJ]; Dec. 9, 2020) p. 53

— Obedience to the dictates of the law and justice is demanded of every judge; a sitting magistrate cannot mete out justice when he himself undermines the court's authority; a judge cannot be an exemplar of upholding

— The totality of the facts and the surrounding circumstances of the case should be considered in distinguishing between permissible job contracting and prohibited labor-only contracting. (*Id.*)

LOCAL GOVERNMENTS

Creation, Division, Merger, and Abolition of Local Government Units (LGUs) and Demarcation of Boundaries — In boundary dispute adjudication, tribunals must weigh and interpret the evidence presented in a manner which gives full effect to, and is most consistent with, the statute or statutes creating the LGUs involved in the dispute. (Municipality of Isabel, Leyte *v.* Municipality of Merida, Leyte; G.R. No. 216092; Dec. 9, 2020) p. 159

— The Constitution regulates *inter alia* the creation, division, merger, and abolition of LGUs, as well as the demarcation of boundaries there; Article X, Section 10 of the basic law requires that substantial alterations in LGU boundaries should be made in accordance with the criteria established in the Local Government Code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (*Id.*)

— The function of tribunals in the adjudication of LGU boundary disputes is limited to the factual determination of the correct boundary line in accordance with the statutes creating the LGUs involved; to aid the duly designated tribunals in the task of boundary dispute resolution, the Implementing Rules and Regulations of the Local Government Code require the submission inter alia of the following: a duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU; a provincial, city, municipal, or barangay map, as the case may be, duly certified by the Lands Management Bureau; technical description of the boundaries of the LGUs concerned; written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody; and written

— It is available when a tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office. (*Id.*)

— The remedy lies to compel the performance of a ministerial duty; it can only direct the tribunal, body, or official to act, but not in a particular way; it cannot direct the exercise of judgment unless there is grave abuse of discretion. (*Id.*)

NOTARIAL PRACTICE

Duties of Notaries Public — A notarized document is, by law, entitled to full faith and credit upon its face; it is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined. (Judge Guerrero *v.* Atty. Giron; A.C. No. 10928; Dec. 9, 2020) p. 21

Effects of Notarization — Time and again, the Court has emphasized that notarization of documents is not an empty, meaningless routinary act but one invested with substantive public interest; the notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. (Judge Guerrero *v.* Atty. Giron; A.C. No. 10928; Dec. 9, 2020) p. 21

Notarial Commission — Without a commission, a lawyer is unauthorized to perform any of the notarial acts; a lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities. (Judge Guerrero *v.* Atty. Giron; A.C. No. 10928; Dec. 9, 2020) p. 21

Violations of the Notarial Rules — By performing notarial acts without the necessary commission from the court, respondent violated not only her oath to obey the laws,

Honoraria ¯— DBM Circular No. 2007-2 and DBM Circular No. 2007-510 require that there should be a specific appropriation for incentives or honoraria under the RDC-CAR's PS account in the 2009 and 2010 GAAs. (Ngalob, *et al. v.* COA; G.R. No. 238882; Jan. 5, 2021) p. 849

— [P]aragraph 4.5 of DBM Circular No. 2007-2 was emphatic in requiring that: "4.5 Payment of honorarium shall be made only upon completion and acceptance by the agency head of the deliverable per project component." (*Id.*)

— Similar conditions for the grant of honoraria to officials and employees assigned to special projects are imposed in the 2009 and 2010 GAAs, *i.e.*, aside from the special project entailing rendition of additional work over and above their regular workload, the special project should be "reform-oriented or developmental, contribute[s] to the improvement of service delivery and enhancement of the performance of the core functions of the agency, and ha[s] specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year; x x x." (*Id.*)

— The general averment of "pursuing social preparation of the Cordillera Administrative Region (CAR) into an autonomous region" does not suffice to prove that a "project" was undertaken to warrant disbursements for the payment of honoraria. (*Id.*)

— The payment of honoraria to officers and employees assigned to a special project must be supported by specific appropriations in the agency's Personal Services Account (PAS) under the General Appropriations Act (GAA), and not in the Maintenance and Other Operating Expenses (MOOE). (*Id.*)

¯ The requirement under the DBM circulars that the amounts to fund the honoraria were to be appropriated by the GAA only meant that such funding must be purposefully, deliberately, and precisely included in the GAA; hence, Section 57 of the 2009 GAA and Section

Elements of Statutory Rape — Two elements must be established to hold the accused guilty of statutory rape, namely: (1) that the accused had carnal knowledge of a woman; and (2) that the woman is below 12 years of age or demented; proof of force, threat, intimidation, or consent is unnecessary, since none of these is an element of statutory rape, where the only subject of inquiry is the age of the woman and whether carnal knowledge took place. (People *v.* Manuel; G.R. No. 242278; Dec. 9, 2020) p. 374

Moral Ascendancy — Regarding the element of force or intimidation, or exertion of moral ascendancy, the RTC aptly concluded that although the rape was committed without physical force or intimidation, the moral ascendancy of accused-appellant over AAA renders it unnecessary to prove force or intimidation; it is settled that where the rape is committed by a close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed; moral influence or ascendancy takes the place of violence or intimidation. (People *v.* Padin; G.R. No. 250418; Dec. 9, 2020) p. 558

Penalty — For the crime of Attempted Qualified Rape under Article 266 A(1)(d), in relation to Article 266-B(1) of the RPC, the penalty shall be *prision mayor*, since Article 51 of the RPC states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principal in an attempt to commit a felony; applying the Indeterminate Sentence Law, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years; in this case, the CA correctly imposed the penalty of imprisonment of six (6) years of *prision correccional*, as minimum to ten (10) years of *prision mayor*, as maximum. (People *v.* Manuel; G.R. No. 242278; Dec. 9, 2020) p. 374

assumed jurisdiction. (People *v.* Padin; G.R. No. 250418; Dec. 9, 2020) p. 558

Touching or Penetration of the Penis — In *People v. Campuhan*, the Court delineated what constitutes "touching" by the penis in rape, *viz.*: touching when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a scrape of the penis on the external layer of the victim's vagina, or the *mons pubis*, as in this case; there must be sufficient and convincing proof that the penis indeed touched the *labias* or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape; as the *labias*, which are required to be "touched" by the penis, are by their natural *situs* or location beneath the *mons pubis* or the vaginal surface, to touch them with the penis is to attain some degree of penetration beneath the surface, hence, the conclusion that touching the *labia majora* or the *labia minora* of the *pudendum* constitutes consummated rape. (People *v.* Manuel; G.R. No. 242278; Dec. 9, 2020) p. 374

— The Court, in *People v. Bonaagua*, declared that the slightest penetration by the male organ or even its slightest contact with the outer lip or the *labia majora* of the vagina already consummates the crime of rape; in *People v. Arce, Jr.*, the Court found the accused guilty of attempted rape only, owing to the failure of the victim to declare a slightest penetration into her vagina, which was necessary to consummate rape. (*Id.*)

— The victim categorically stated that the accused was not able to insert his penis into her private part because she was moving her hips away; in *People v. Tolentino*, the Court, in the same manner, convicted the accused of attempted rape only, underscoring the paucity of evidence that the slightest penetration ever took place, *i.e.*, that the victim's statements that the accused was "trying to force his sex organ into mine" and "*binundol-bundol ang kanyang ari*" did not prove that the accused's penis

Good Faith in the Receipt of Disallowed Amount — The Court applied the principle of *solutio indebiti* and unjust enrichment in considering the liability of passive recipients regardless of their good faith in the receipt of the disallowed amounts; these concepts are based on Article 2154 of the Civil Code, which provides that if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises. (Power Sector Assets and Liabilities Management (PSALM) Corporation Represented by Irene J. Besido-Garcia, in her Capacity as President and Chief Executive Officer (CEO), *et al. v.* Commission on Audit; G.R. No. 245830; Dec. 9, 2020) p. 482

Principle of Solutio Indebiti and Unjust Enrichment — There are, however, exceptions to the general application of *solutio indebiti* when applied to passive recipients, namely: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; (3) where social justice or humanitarian considerations are attendant; and (4) other *bona fide* exceptions as may be determined on a case to case basis. (Power Sector Assets and Liabilities Management (PSALM) Corporation Represented by Irene J. Besido-Garcia, in her Capacity as President and Chief Executive Officer (CEO), *et al. v.* Commission on Audit; G.R. No. 245830; Dec. 9, 2020) p. 482

STATUTORY CONSTRUCTION

Interpretation of a Statute — This Court must construe R.A. No. 191 to mean that the legislature deliberately excluded Benabaye and, consequently, the disputed area, from the territorial jurisdiction of the Municipality of Isabel; the boundary line which more accurately reflects this intention of the legislature is that which is marked by the lost shoreward monument and the monument near the ancient doldol tree, both installed along the old Doldol Creek in 1947. (Municipality of Isabel, Leyte *v.* Municipality of Merida, Leyte; G.R. No. 216092; Dec. 9, 2020) p. 159

SUCCESSION

SUMMONS

Extraterritorial Service — To avail of this mode, the action or complaint filed against a non-resident defendant: (1) affects the personal status of the plaintiff or relates to; or (2) the subject of which, is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; or (3) in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein; or (4) the property of the defendant has been attached within the Philippines. (Sarol *v.* Spouses Diao, *et al.*; G.R. No. 244129; Dec. 9, 2020) p. 435

— Under this rule, one of the modes to effect the extraterritorial service of summons is by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known correct address of the defendant. (*Id.*)

Service of Summons — Following the provisions of Section 15, Rule 14 of the Rules of Court and the aforementioned order of the court, publication must be duly observed and copies of the summons and order of the court be served at Sarol's last known correct address by registered mail, as a complement to the publication; the failure to strictly comply with the requirements of the rules regarding the mailing of copies of the summons and the order for its publication is a fatal defect in the service of summons. (Sarol *v.* Spouses Diao, *et al.*; G.R. No. 244129; Dec. 9, 2020) p. 435

— In order to effect the proper service of summon, it is crucial to furnish the correct address of the defendant or respondent in a complaint; the foregoing is in consonance with the doctrine of due process; a violation of this due process would be a jurisdictional defect; absent the proper service of summons, the trial court does not acquire jurisdiction and renders null and void all subsequent proceedings and issuances in relation to the case. (*Id.*)

domestic corporation except if the sale or disposition is through the stock exchange. (Commissioner of Internal Revenue *v.* The Hongkong Shanghai Banking Corporation Limited - Philippine Branch; G.R. No. 227121; Dec. 9, 2020) p. 243

— Section 27(A) of the NIRC of 1997, as amended, provides that except as otherwise provided in this Code, an income tax shall be imposed on the taxable income derived by domestic corporations; paragraph (D)(2) thereof states that a final tax at the rates of 5% or 10% shall be imposed on the net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation not traded in the stock exchange; Revenue Regulation 6-2008, which implements the aforesaid provision, echoes Section 27(D)(2) and provides for rules on the determination of gain or loss for the purpose of the imposition of CGT; the amount of the gain realized from the sale of shares of stock not traded through the local stock exchange, is in lieu of the regular corporate income tax. (*Id.*)

— In several rulings issued by the Bureau of Internal Revenue, it was recognized that the gain realized from the sale of shares acquired through a tax-free exchange transaction is subject to CGT; therefore, the subsequent disposition of HSBC's GPAP-Phils. Inc. shares in favor of GPAP-Singapore is subject to CGT and not to regular corporate income tax under Section 27(A), upon which the CIR'S assessment is based. (*Id.*)

Tax Avoidance — A taxpayer has the legal right to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits; this is called tax avoidance; it is the use of legal means to reduce tax liability; however, this method should be used by the taxpayer in good faith and at arms-length. (Commissioner of Internal Revenue *v.* The Hongkong Shanghai Banking Corporation Limited - Philippine Branch; G.R. No. 227121; Dec. 9, 2020) p. 243

is because, in a tax—free exchange, the recognition of gain or loss arising from the exchange is merely deferred. (*Id.*)

VOLUNTARY ARBITRATION

— The date a decision is signed by the members of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board (PVA-NCMB) is deemed the date of its promulgation. (BSM Crew Service Centre Philippines, Inc. *v.* Jones; G.R. No. 240518; Dec. 9, 2020) p. 324

WILLS

Requirements for the Validity of a Will — Under Articles 805 and 806 of the Civil Code, the requirements for the validity of a will are as follows: (1) subscribed by the testator or his agent in his presence and by his express direction at the end thereof, in the presence of the witnesses; (2) attested and subscribed by at least three credible witnesses in the presence of the testator and of one another; (3) the testator, or his agent, must sign every page, except the last, on the left margin in the presence of the witnesses; (4) the witnesses must sign every page, except the last, on the left margin in the presence of the testator and of one another; (5) all pages numbered correlatively in letters on the upper part of each page; (6) attestation clause, stating: (a) the number of pages of the will; (b) the fact that the testator or his agent under his express direction signed the will and every page thereof, in the presence of the witnesses; and (c) the fact that the witnesses witnessed and signed the will and every page thereof in the presence of the testator and one another; and (7) acknowledgment before a notary public. (Heirs of Fedelina Sestoso Estella represented by Virgilia Estella Poliquit, *et al. v.* Estella, *et al.;* G.R. No. 245469; Dec. 9, 2020) p. 465

WITNESSES

Affidavits of Desistance — It has been consistently held that courts look with disfavor on affidavits of desistance; in *Bagsic*, the Court had an occasion to discuss the rationale

CITATION

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I. LOCAL CASES

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II. FOREIGN CASES