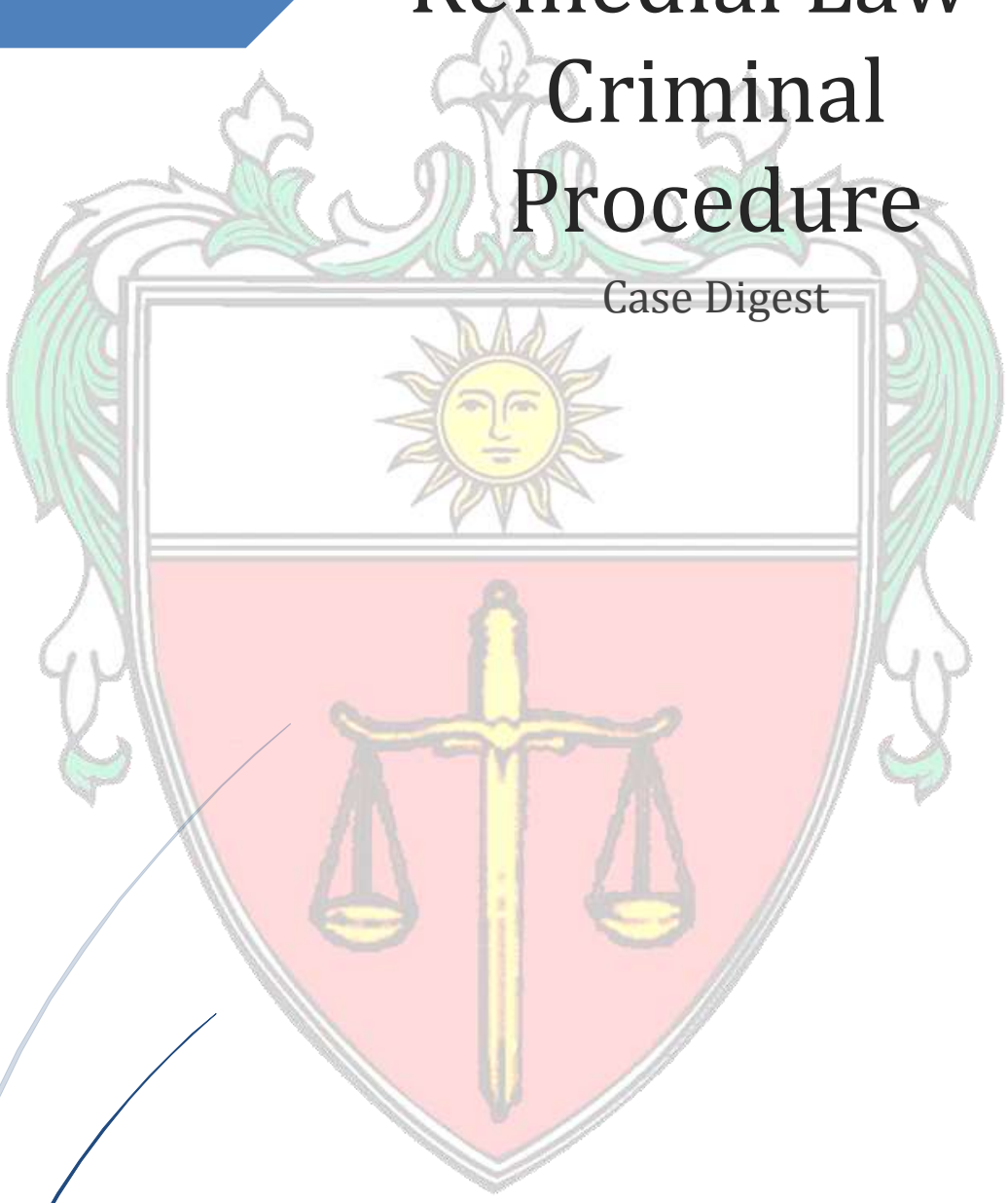
Remedial Law - Criminal Procedure

Case Digest



UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

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PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- HERMOGENES MARIANO and HON. AMBROSIO M. GERALDEZ, in his capacity as Presiding Judge of the Court of First Instance of Bulacan, Branch V, *Respondents*.
G.R. No. L-40527, FIRST DIVISION, June 30, 1976, MUÑOZ PALMA, *J*

In People vs. Fontanilla, this Court speaking through then Justice now Chief Justice Fred Ruiz Castro, categorically reiterated the settled rule that the jurisdiction of a court is determined by the statute in force at the time of the commencement of the action.

FACTS:

The office of the Provincial Fiscal of Bulacan filed an Information accusing private respondent herein Hermogenes Mariano of *estafa.* Hermogenes Mariano thru his counsel Filed a motion to quash the Information. In his motion to quash, Mariano claimed that the items which were the subject matter of the Information against him were the same items for which Mayor Constantino A. Nolasco of San Jose del Monte, province of Bulacan, was indicted before a Military Commission under a charge of malversation of public property, and for which Mayor Nolasco had been found guilty and sentenced to imprisonment at hard labor for ten years and one day to fourteen years and eight months with perpetual disqualification plus a fine of P19,646.15 and that inasmuch as the case against Mayor Nolasco had already been decided by the Military Tribunal, the Court of First Instance of Bulacan had lost jurisdiction over the case against him.

Respondent Judge issued an Order granting the motion to quash on the ground of lack of jurisdiction.

ISSUE:

Whether or not the respondent court has jurisdiction over the case. (YES)

RULING:

The conferment of jurisdiction upon courts or judicial tribunals is derived exclusively from the constitution and statutes of the forum. Thus, the question of jurisdiction of respondent Court of First Instance over the case filed before it is to be resolved on the basis of the law or statute providing for or defining its jurisdiction. That, We find in the Judiciary Act of 1948 where in its Section 44 (f) it is provided:

> SEC. 44. *Original jurisdiction*. — Courts of First Instance shall have original jurisdiction:
> xxx xxx xxx
>
> (f) *In all criminal cases in which the penalty provided by law is imprisonment for more than six months,* or a fine of more than two hundred pesos, (emphasis supplied)

The offense of *estafa* charged against respondent Mariano is penalized with *arresto mayor* in its maximum period to *prisioncorreccional* in its minimum period, or imprisonment from four (4) months and one (1) day to two (2) years and four (4) months. By reason of the penalty imposed which exceeds six (6) months imprisonment, the offense alleged to have been committed by the accused, now respondent, Mariano, falls under the original jurisdiction of courts of first instance.

In *People vs. Fontanilla*, this Court speaking through then Justice now Chief Justice Fred Ruiz Castro, categorically reiterated the settled rule *that the jurisdiction of a court is determined by the statute in force at the time of the commencement of the action*. In the case at bar, it is rightly contended by the Solicitor General that at the time Criminal Case No. SM-649 *was filed* with the Court of First Instance of Bulacan, that was *December 18, 1974,* the law in force vesting jurisdiction upon said court was the Judiciary Act of 1948, the particular provision of which was not affected one way or the other by any Presidential issuances under Martial Law. General Order No. 49 dated *October 4, 1974*, which repeals General Order No. 12 and the latter's amendments and related General Orders inconsistent with the former, redefines the jurisdiction of military tribunals over certain offense, and *estafa* and malversation are not among those enumerated therein. In other words the Military Commission is not vested with jurisdiction over the crime of *estafa*.

Respondent court therefore gravely erred when it ruled that it lost jurisdiction over the *estafa* case against respondent Mariano with the filing of the malversation charge against Mayor Nolasco before the Military Commission. Estafa and malversation are two separate and distinct offenses and in the case now before Us the accused in one is different from the accused in the other. But more fundamental is the fact that We do not have here a situation involving two tribunals vested with concurrent jurisdiction over a particular crime so as to apply the rule that the court or tribunal which first takes cognizance of the case acquires jurisdiction thereof exclusive of the other. The Military Commission as stated earlier is without power or authority to hear and determine the particular offense charged against respondent Mariano, hence, there is no concurrent jurisdiction between it and respondent court to speak of. *Estafa as described in the Information* filed in Criminal Case No. SM-649 *falls within the sole exclusive jurisdiction of civil courts*.

EILEEN P. DAVID, *Petitioner* –versus- GLENDA S. MARQUEZ, *Respondent*
G.R. No. 209859, THIRD DIVISION, June 5, 2017, TIJAM, *J.*

It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.

FACTS:

In a *Sinumpaang Salaysay* filed before the Office of the City Prosecutor of Manila, Respondent Glenda Marquez alleged that petitioner approached her in Kidapawan City and represented that she could recruit her to work abroad. It was further alleged that petitioner demanded payment of placement fees and other expenses from the respondent for the processing of the latter's application, to which the respondent heeded.Respondent's application was, however, denied and worse, the money that she put out therefor was never returned. Two separate Informations were filed against petitioner for Illegal Recruitment and Estafa, respectively.

Petitioner filed a Motion to Quash the Information arguing that she was deprived of her right to seek reconsideration or reinvestigation of the public prosecutor's resolution as she was not furnished a

copy thereof. Also, petitioner argued that the City Prosecutor of Manila had no jurisdiction over the case as the alleged crime was committed in Kidapawan City.

RTC denied petitioner's Motion to Quash, ruling that the ground relied upon by the petitioner in the said motion is not one of those enumerated under Section 3[[16], Rule 117 of the Rules of Court for quashing a complaint or information. As to the jurisdictional issue, the RTC ruled that it has jurisdiction to take cognizance of the case, citing Section 9 of Republic Act No. 8042.

Petitioner filed a Motion for Reconsideration of the said Order alleging that she just found out that there were two Informations filed against her, one for Illegal Recruitment and another for Estafa. Petitioner maintained that the alleged crimes were committed in Kidapawan City, not in Manila as alleged in the Informations. RTC reconsidered its May 13, 2011 Order, finding that it had no jurisdiction to try the cases since the crimes of Illegal Recruitment and Estafa were not committed in its territory but in Kidapawan City. On appeal, CA ruled that the RTC has jurisdiction over the cases of Illegal Recruitment and Estafa, citing Section 9 of RA 8042, which provides that a criminal action arising from illegal recruitment may be filed in the place where the offended party actually resides at the time of the commission of the offense. According to the CA, it was established that herein respondent was residing in Sampaloc, Manila at the time of the commission of the crimes. Therefore, the two (2) Informations herein were correctly filed with the RTC of Manila, pursuant to Section 9 of RA 8042.

ISSUE:

Whether or not the RTC of Manila have jurisdiction over the cases of Illegal Recruitment and Estafa. (YES)

RULING:

Indeed, venue in criminal cases is an essential element of jurisdiction. As explained by this Court in the case of *Foz, Jr. v. People:*

> It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, the jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.

Section 15(a), Rule 110 of the Rules of Criminal Procedure provides: SEC. 15. *Place where action is to be instituted.* - a) Subject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.
At the risk of being repetitive, Sec. 9 of RA 8042, however, fixed an alternative venue from that provided in Section 15(a) of the Rules of Criminal Procedure, *i.e.,* a criminal action arising from illegal recruitment may also be filed where the offended party actually resides at the time of the commission

of the offense and that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

Despite the clear provision of the law, the RTC of Manila declared that it has no jurisdiction to try the cases as the illegal Recruitment and Estafa were not committed in its territory but in Kidapawan City. We are, thus, one with the CA in finding that the RTC of Manila committed grave abuse of discretion and in fact, a palpable error, in ordering the quashal of the Informations. The express provision of the law is clear that the filing of criminal actions arising from illegal recruitment before the RTC of the province or city where the offended party actually resides at the time of the commission of the offense is allowed.

It has been found by both the RTC and the CA that the respondent resides in Manila; hence, the filing of the case before the RTC of Manila was proper. Thus, the trial court should have taken cognizance of the case, and if it will eventually be shown during trial that the offense was committed somewhere else, then the court should dismiss the action for want of jurisdiction. As a matter of fact, the RTC is not unaware of the above-cited provision which allows the filing of the said case before the RTC of the city where the offended party resides at the time of the commission of the offense; hence, it originally denied petitioner's Motion to Quash. This Court is, thus, baffled by the fact that the RTC reversed itself upon the petitioner's motion for reconsideration on the same ground that it previously invalidated.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- CLEMENTE BAUTISTA, *Respondent*.
G.R. No. 168641, THIRD DIVISION, April 27, 2007, AUSTRIA-MARTINEZ, *J.*

It is a well-settled rule that the filing of the complaint with the fiscal's office suspends the running of the prescriptive period.

FACTS:

A dispute arose between respondent and his co-accused Leonida Bautista, on one hand, and private complainant Felipe Goyena, Jr., on the other.Private complainant filed a Complaint with the Office of the *Barangay* of Malate, Manila, but no settlement was reached. The *barangay* chairman then issued a Certification to file action dated August 11, 1999.On August 16, 1999, private complainant filed with the Office of the City Prosecutor a Complaint for slight physical injuries against herein respondent and his co-accused. After conducting the preliminary investigation, Prosecutor Jessica Junsay-Ong issued a Joint Resolution recommending the filing of an Information against herein respondent. The Information was, however, filed with the MeTC of Manila, Branch 28 only on June 20, 2000.

Respondent sought the dismissal of the case against him on the ground that by the time the Information was filed, the 60-day period of prescription from the date of the commission of the crime, that is, on June 12, 1999 had already elapsed. The MeTC ruled that the offense had not yet prescribed.

Respondent elevated the issue to the RTC but the RTC denied said petition and concurred with the opinion of the MeTC.CA concluded that the offense had prescribed by the time the Information was filed with the MeTC.

ISSUE:

Whether or not the prescriptive period began to run anew after the investigating prosecutor's recommendation to file the proper criminal information against respondent was approved by the

City Prosecutor. (NO)

RULING:

Article 91 of the Revised Penal Code provides thus:

> Art. 91. *Computation of prescription of offenses*. - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and **shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.**

The term of prescription shall not run when the offender is absent from the Philipppine Archipelago.

The CA and respondent are of the view that upon approval of the investigating prosecutor's recommendation for the filing of an information against respondent, the period of prescription began to run again. The Court does not agree. It is a well-settled rule that the filing of the complaint with the fiscal's office suspends the running of the prescriptive period.

The proceedings against respondent was not terminated upon the City Prosecutor's approval of the investigating prosecutor's recommendation that an information be filed with the court. The prescriptive period remains tolled from the time the complaint was filed with the Office of the Prosecutor until such time that respondent is either convicted or acquitted by the proper court.

LUZ M. ZALDIVIA,*Petitioner*, -versus- HON. ANDRES B. REYES, JR., in his capacity as Acting Presiding Judge of the Regional Trial Court, Fourth Judicial Region, Branch 76, San Mateo, Rizal, and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 102342, EN BANC, July 3, 1992, CRUZ, J.

Under Section 9 of the Rule on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.

FACTS:

The petitioner is charged with quarrying for commercial purposes without a mayor's permit in violation of Ordinance No. 2, Series of 1988, of the Municipality of Rodriguez, in the Province of Rizal.The offense was allegedly committed on May 11, 1990. The referral-complaint of the police was received by the Office of the Provincial Prosecutor of Rizal on May 30, 1990. The corresponding information was filed with the Municipal Trial Court of Rodriguez on October 2, 1990. The petitioner moved to quash the information on the ground that the crime had prescribed, but the motion was denied. On appeal to the Regional Trial Court of Rizal, the denial was sustained by the respondent judge.

In the present petition for review on certiorari, the petitioner first argues that the charge against her is governed by the provisions of the Rule on Summary Procedure. She then invokes Act. No. 3326, as amended, entitled "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run." Her conclusion is that as the information was filed way beyond thetwo-month statutory period from the date of the alleged commission of the offense, the charge against her should have been dismissed on the ground of prescription.

For its part, the prosecution contends that the prescriptive period was suspended upon the filing of the complaint against her with the Office of the Provincial Prosecutor. Agreeing with the respondent judge, the Solicitor General also invokes Section 1, Rule 110 of the 1985 Rules on Criminal Procedure. The respondent maintains that the filing of the complaint with the Office of the Provincial Prosecutor comes under the phrase "such institution" and that the phrase "in all cases" applies to all cases, without distinction, including those falling under the Rule on Summary Procedure.

ISSUE:

Whether or not the prescriptive periodwas interrupted by the filing of the complaint with the Office of the Provincial Prosecutor. (NO)

RULING:

As it is clearly provided in the Rule on Summary Procedure that among the offenses it covers are violations of municipal or city ordinances, it should follow that the charge against the petitioner, which is for violation of a municipal ordinance of Rodriguez, is governed by that rule and not Section 1 of Rule 110.

Where paragraph (b) of the section does speak of "offenses falling under the jurisdiction of the Municipal Trial Courts and Municipal Circuit Trial Courts," the obvious reference is to Section 32(2) of B.P. No. 129, vesting in such courts:

(2) Exclusive original jurisdiction over all offenses punishable with imprisonment of not exceeding four years and two months, or a fine of not more than four thousand pesos, or both such fine and imprisonment, regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value, or amount thereof; Provided, however, That in offenses involving damage to property through criminal negligence they shall have exclusive original jurisdiction where the imposable fine does not exceed twenty thousand pesos.

These offenses are not covered by the Rule on Summary Procedure.

Under Section 9 of the Rule on Summary Procedure, "the complaint or information shall be filed directly in court without need of a prior preliminary examination or preliminary investigation." Both parties agree that this provision does not prevent the prosecutor from conducting a preliminary investigation if he wants to. However, the case shall be deemed commenced only when it is filed in court, whether or not the prosecution decides to conduct a preliminary investigation. This means that the running of the prescriptive period shall be halted on the date the case is actually filed in court and not on any date before that.

This interpretation is in consonance with the afore-quoted Act No. 3326 which says that the period of prescription shall be suspended "when proceedings are instituted against the guilty party." The proceedings referred to in Section 2 thereof are "judicial proceedings," contrary to the submission of the Solicitor General that they include administrative proceedings. His contention is that we must not distinguish as the law does not distinguish. As a matter of fact, it does.

At any rate, the Court feels that if there be a conflict between the Rule on Summary Procedure and Section 1 of Rule 110 of the Rules on Criminal Procedure, the former should prevail as the special law. And if there be a conflict between Act. No. 3326 and Rule 110 of the Rules on Criminal Procedure, the latter must again yield because this Court, in the exercise of its rule-making power, is not allowed to "diminish, increase or modify substantive rights" under Article VIII, Section 5(5) of the Constitution. Prescription in criminal cases is a substantive right.

Our conclusion is that the prescriptive period for the crime imputed to the petitioner commenced from its alleged commission on May 11, 1990, and ended two months thereafter, on July 11, 1990, in accordance with Section 1 of Act No. 3326. It was not interrupted by the filing of the complaint with the Office of the Provincial Prosecutor on May 30, 1990, as this was not a judicial proceeding. The judicial proceeding that could have interrupted the period was the filing of the information with the Municipal Trial Court of Rodriguez, but this was done only on October 2, 1990, after the crime had already prescribed.

SANRIO COMPANY LIMITED, *Petitioner*, -versus- EDGAR C. LIM, doing business as ORIGNAMURA TRADING, *Respondent.*
G.R. No. 168662, FIRST DIVISION, February 19, 2008, CORONA, *J.*

In the recent case of Brillantesv. Court of Appeals, we affirmed that the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription of criminal responsibility. Thus, the prescriptive period for the prosecution of the alleged violation of the IPC was tolled by petitioner's timely filing of the complaint-affidavit before the TAPP.

FACTS:

Petitioner Sanrio Company Limited, a Japanese corporation, owns the copyright of various animated characters. While it is not engaged in business in the Philippines, its products are sold locally by its exclusive distributor, Gift Gate Incorporated.As such exclusive distributor, GGI entered into licensing agreements with JC Lucas Creative Products, Inc., Paper Line Graphics, Inc. and Melawares Manufacturing Corporation. These local entities were allowed to manufacture certain products (bearing petitioner's copyrighted animated characters) for the local market. Due to the deluge of counterfeit Sanrio products, GGI asked IP Manila Associates to conduct a market research. The research's objective was to identify those factories, department stores and retail outlets manufacturing and/or selling fake Sanrio items. After conducting several test-buys in various commercial areas, IPMA confirmed that respondent's Orignamura Trading in Tutuban Center, Manila was selling imitations of petitioner's products.

On May 29, 2000, IPMA agents Lea A. Carmona and Arnel P. Dausan executed a joint affidavit attesting to the aforementioned facts. IPMA forwarded the said affidavit to the NBI which thereafter filed an application for the issuance of a search warrant in the office of the Executive Judge of the Regional Trial Court of Manila.On April 4, 2002, petitioner, through its attorney-in-fact Teodoro Y. Kalaw IV of the Quisumbing Torres law firm, filed a complaint-affidavit with the Task-Force on Anti-Intellectual

Property Piracy of the Department of Justice against respondent for violation of Section 217 (in relation to Sections 177and 178) of the Intellectual Property Code (IPC).

In a resolution, TAPP dismissed the complaint due to insufficiency of evidence.Aggrieved, petitioner filed a petition for certiorari in the CA. On May 3, 2005, the appellate court dismissed the petition on the ground of prescription. It based its action on Act 3326. According to the CA, because no complaint was filed in court within two years after the commission of the alleged violation, the offense had already prescribed.

ISSUE:

Whether or not the respondent's violation already prescribed. (NO)

RULING:

Section 2 of Act 3326 provides that the prescriptive period for violation of special laws starts on the day such offense was committed and is interrupted by the institution of proceedings against respondent (*i.e.*, the accused).

Petitioner in this instance filed its complaint-affidavit on April 4, 2002 or one year, ten months and four days after the NBI searched respondent's premises and seized Sanrio merchandise therefrom. Although no information was immediately filed in court, respondent's alleged violation had not yet prescribed.

In the recent case of *Brillantesv. Court of Appeals*, we affirmed that the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription of criminal responsibility. Thus, the prescriptive period for the prosecution of the alleged violation of the IPC was tolled by petitioner's timely filing of the complaint-affidavit before the TAPP.

LUIS PANAGUITON, JR., *Petitioner* –versus- DEPARTMENT OF JUSTICE, RAMON C. TONGSON and RODRIGO G. CAWILIR, *Respondents.*
G.R. No. 167571, SECOND DIVISION, November 25, 2008, TINGA, *J.*

In Ingco v. Sandiganbayan and Sanrio Company Limited v. Lim,which involved violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and the Intellectual Property Code (R.A. No. 8293), which are both special laws, the Court ruled that the prescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused.

FACTS:

Rodrigo Cawili borrowed various sums of money amounting to ₱1,979,459.00 from petitioner. Cawili and his business associate, Ramon C. Tongson, jointly issued in favor of petitioner three (3) checks in payment of the said loans. Significantly, all three (3) checks bore the signatures of both Cawili and Tongson. Upon presentment for payment on 18 March 1993, the checks were dishonored, either for insufficiency of funds or by the closure of the account. Petitioner made formal demands to pay the amounts of the checks upon Cawili on 23 May 1995 and upon Tongson on 26 June 1995, but to no

avail.

Petitioner filed a complaint against Cawili and Tongson for violating B.P. Blg. 22before the Quezon City Prosecutor's Office. In a resolution dated 6 December 1995, City Prosecutor III Lara found probable cause only against Cawili and dismissed the charges against Tongson. Petitioner filed a partial appeal before the DOJ even while the case against Cawili was filed before the proper court. In a letter-resolution dated 11 July 1997, after finding that it was possible for Tongson to co-sign the bounced checks and that he had deliberately altered his signature in the pleadings submitted during the preliminary investigation, Chief State Prosecutor Zuño directed the City Prosecutor of Quezon City to conduct a reinvestigation of the case against Tongson and to refer the questioned signatures to the NBI.

Assistant City Prosecutor Sampaga dismissed the complaintagainst Tongson without referring the matter to the NBI per the Chief State Prosecutor's resolution. In her resolution, ACP Sampaga held that the case had already prescribed pursuant to Act No. 3326, as amended, which provides that violations penalized by B.P. Blg. 22 shall prescribe after four years. On 3 April 2003, the DOJ, this time through then Undersecretary Ma. Merceditas N. Gutierrez, declared that the offense had not prescribed and that the filing of the complaint with the prosecutor's office interrupted the running of the prescriptive period citing *Ingco v. Sandiganbayan*. Thus, the Office of the City Prosecutor of Quezon City was directed to file three separate informations against Tongson for violation of B.P. Blg. 22. On 8 July 2003, the City Prosecutor's Office filed an informationcharging petitioner with three (3) counts of violation of B.P. Blg. 22.However, in a resolution dated 9 August 2004, the DOJ, presumably acting on a motion for reconsideration filed by Tongson, ruled that the subject offense had already prescribed and ordered "the withdrawal of the three informations for violation of B.P. Blg. 22" against Tongson.

ISSUE:

Whether or not the offense has prescribed. (NO)

RULING:

There is no question that Act No. 3326, appropriately entitled An *Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin,* is the law applicable to offenses under special laws which do not provide their own prescriptive periods. The pertinent provisions read:

> Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) x x x; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) x x x
> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

We agree that Act. No. 3326 applies to offenses under B.P. Blg. 22. An offense under B.P. Blg. 22 merits

the penalty of imprisonment of not less than thirty (30) days but not more than one year or by a fine, hence, under Act No. 3326, a violation of B.P. Blg. 22 prescribes in four (4) years from the commission of the offense or, if the same be not known at the time, from the discovery thereof. Nevertheless, we cannot uphold the position that only the filing of a case in court can toll the running of the prescriptive period.

It must be pointed out that when Act No. 3326 was passed on 4 December 1926, preliminary investigation of criminal offenses was conducted by justices of the peace, thus, the phraseology in the law, "institution of judicial proceedings for its investigation and punishment," and the prevailing rule at the time was that once a complaint is filed with the justice of the peace for preliminary investigation, the prescription of the offense is halted.

In *Ingco v. Sandiganbayan* and *Sanrio Company Limited v. Lim*,which involved violations of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and the Intellectual Property Code (R.A. No. 8293), which are both special laws, the Court ruled that theprescriptive period is interrupted by the institution of proceedings for preliminary investigation against the accused. In the more recent case *of Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court ruled that the nature and purpose of the investigation conducted by the Securities and Exchange Commission on violations of the Revised Securities Act, another special law, is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, and thus effectively interrupts the prescriptive period.

We rule and so hold that the offense has not yet prescribed. Petitioner 's filing of his complaint-affidavit before the Office of the City Prosecutor on 24 August 1995 signified the commencement of the proceedings for the prosecution of the accused and thus effectively interrupted the prescriptive period for the offenses they had been charged under B.P. Blg. 22. Moreover, since there is a definite finding of probable cause, with the debunking of the claim of prescription there is no longer any impediment to the filing of the information against petitioner.

SECURITIES AND EXCHANGE COMMISSION, *Petitioner*, -versus- INTERPORT RESOURCES CORPORATION, MANUEL S. RECTO, RENE S. VILLARICA, PELAGIORICALDE, ANTONIO REINA, FRANCISCO ANONUEVO, JOSEPH SY and SANTIAGO TANCHAN, JR., *Respondents*.
G.R. No. 135808, EN BANC, October 6, 2008, CHICO-NAZARIO, *J.*

Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation. The prosecution of offenses punishable under the Revised Securities Act and the Securities Regulations Code is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC motuproprio. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation.

FACTS:

The Board of Directors of IRC approved a Memorandum of Agreement with Ganda Holdings Berhad. Under the Memorandum of Agreement, IRC acquired 100% or the entire capital stock of Ganda Energy Holdings, Inc., which would own and operate a 102 megawatt gas turbine power-generating barge. The agreement also stipulates that GEHI would assume a five-year power purchase contract with National Power Corporation. At that time, GEHI's power-generating barge was 97% complete and would go on-line by mid-September of 1994. In exchange, IRC will issue to GHB 55% of the

expanded capital stock of IRC amounting to 40.88 billion shares which had a total par value of ₱488.44 million.On the side, IRC would acquire 67% of the entire capital stock of Philippine Racing Club, Inc.. PRCI owns 25.724 hectares of real estate property in Makati.

IRC alleged that on 8 August 1994, a press release announcing the approval of the agreement was sent through facsimile transmission to the Philippine Stock Exchange and the SEC, but that the facsimile machine of the SEC could not receive it. Upon the advice of the SEC, the IRC sent the press release on the morning of 9 August 1994.The SEC averred that it received reports that IRC failed to make timely public disclosures of its negotiations with GHB and that some of its directors, respondents herein, heavily traded IRC shares utilizing this material insider information. On 16 August 1994, the SEC Chairman issued a directive requiring IRC to submit to the SEC a copy of its aforesaid Memorandum of Agreement with GHB.

In compliance with the SEC Chairman's directive, the IRC sent a letter to the SEC, attaching thereto copies of the Memorandum of Agreement. SEC Chairman issued an Order finding that IRC violated the Rules on Disclosure of Material Facts, in connection with the Old Securities Act of 1936, when it failed to make timely disclosure of its negotiations with GHB. In addition, the SEC pronounced that some of the officers and directors of IRC entered into transactions involving IRC shares in violation of Section 30, in relation to Section 36, of the Revised Securities Act.

Respondents filed an Omnibus Motion, dated 21 September 1994, which was superseded by an Amended Omnibus Motion, filed on 18 October 1994, alleging that the SEC had no authority to investigate the subject matter, since under Section 8 of Presidential Decree No. 902-A, as amended by Presidential Decree No. 1758, jurisdiction was conferred upon the Prosecution and Enforcement Department (PED) of the SEC. SEC issued an Omnibus Order creating a special investigating panel to hear and decide the case. Respondents filed an Omnibus Motion for Partial Reconsideration, questioning the creation of the special investigating panel to hear the case and the denial of the Motion for Continuance. The SEC denied reconsideration in its Omnibus Order dated 30 March 1995.

The respondents filed a petition before the Court of Appeals. CA promulgated a Decision where it determined that there were no implementing rules and regulations regarding disclosure, insider trading, or any of the provisions of the Revised Securities Acts which the respondents allegedly violated. The Court of Appeals likewise noted that it found no statutory authority for the SEC to initiate and file any suit for civil liability under Sections 8, 30 and 36 of the Revised Securities Act. Thus, it ruled that no civil, criminal or administrative proceedings may possibly be held against the respondents without violating their rights to due process and equal protection. It further resolved that absent any implementing rules, the SEC cannot be allowed to quash the assailed Omnibus Orders for the sole purpose of re-filing the same case against the respondents. Hence, this petition.
Respondents have taken the position that this case is moot and academic, since any criminal complaint that may be filed against them resulting from the SEC's investigation of this case has already prescribed. They point out that the prescription period applicable to offenses punished under special laws, such as violations of the Revised Securities Act, is twelve years under Section 1 of Act No. 3326, as amended by Act No. 3585 and Act No. 3763. Since the offense was committed in 1994, they reasoned that prescription set in as early as 2006 and rendered this case moot.

ISSUE:

Whether or not the case is already moot because the offense has already prescribed. (NO)

RULING:

It is an established doctrine that a preliminary investigation interrupts the prescription period. A preliminary investigation is essentially a determination whether an offense has been committed, and whether there is probable cause for the accused to have committed an offense.

Under Section 45 of the Revised Securities Act, which is entitled Investigations, Injunctions and Prosecution of Offenses, the Securities Exchange Commission (SEC) has the authority to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act XXX." After a finding that a person has violated the Revised Securities Act, the SEC may refer the case to the DOJ for preliminary investigation and prosecution.

While the SEC investigation serves the same purpose and entails substantially similar duties as the preliminary investigation conducted by the DOJ, this process cannot simply be disregarded. In Baviera v. Paglinawan, this Court enunciated that a criminal complaint is first filed with the SEC, which determines the existence of probable cause, before a preliminary investigation can be commenced by the DOJ.

A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, i.e., the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted.

It should be noted that the SEC started investigative proceedings against the respondents as early as 1994. This investigation effectively interrupted the prescription period. However, said proceedings were disrupted by a preliminary injunction issued by the Court of Appeals on 5 May 1995, which effectively enjoined the SEC from filing any criminal, civil, or administrative case against the respondents herein. Thereafter, on 20 August 1998, the appellate court issued the assailed Decision in C.A. G.R. SP. No. 37036 ordering that the writ of injunction be made permanent and prohibiting the SEC from taking cognizance of and initiating any action against herein respondents. The SEC was bound to comply with the aforementioned writ of preliminary injunction and writ of injunction issued by the Court of Appeals enjoining it from continuing with the investigation of respondents for 12 years. Any deviation by the SEC from the injunctive writs would be sufficient ground for contempt. Moreover, any step the SEC takes in defiance of such orders will be considered void for having been taken against an order issued by a court of competent jurisdiction.

Accordingly, it is only after this Court corrects the erroneous ruling of the Court of Appeals in its Decision dated 20 August 1998 that either the SEC or DOJ may properly conduct any kind of investigation against the respondents for violations of Sections 8, 30 and 36 of the Revised Securities Act. Until then, the prescription period is deemed interrupted.

To reiterate, the SEC must first conduct its investigations and make a finding of probable cause in accordance with the doctrine pronounced in Baviera v. Paglinawan. In this case, the DOJ was

precluded from initiating a preliminary investigation since the SEC was halted by the Court of Appeals from continuing with its investigation. Such a situation leaves the prosecution of the case at a standstill, and neither the SEC nor the DOJ can conduct any investigation against the respondents, who, in the first place, sought the injunction to prevent their prosecution. All that the SEC could do in order to break the impasse was to have the Decision of the Court of Appeals overturned, as it had done at the earliest opportunity in this case. Therefore, the period during which the SEC was prevented from continuing with its investigation should not be counted against it. The law on the prescription period was never intended to put the prosecuting bodies in an impossible bind in which the prosecution of a case would be placed way beyond their control; for even if they avail themselves of the proper remedy, they would still be barred from investigating and prosecuting the case.

Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation. The prosecution of offenses punishable under the Revised Securities Act and the Securities Regulations Code is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC *motuproprio*. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation. Thus, the investigation that was commenced by the SEC in 1995, soon after it discovered the questionable acts of the respondents, effectively interrupted the prescription period. Given the nature and purpose of the investigation conducted by the SEC, which is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, such investigation would surely interrupt the prescription period.

WILSON CHUA, RENITA CHUA, THE SECRETARY OF JUSTICE and THE CITY PROSECUTOR OF LUCENA CITY, *Petitioners*, -versus- RODRIGO PADILLO and MARIETTA PADILLO, *Respondents*.
G.R. No. 163797, FIRST DIVISION, April 24, 2007,SANDOVAL-GUTIERREZ, *J.*

Indeed, as we ruled in Sanchez v. Demetriou, not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a prima facie case. The only possible exception to this rule is where there is an unmistakable showing of grave abuse of discretion on the part of the prosecutor, as in this case.

FACTS:

Rodrigo Padillo and Marietta Padillo, respondents, are the owners of Padillo Lending Investor engaged in the money lending business in Lucena City. Their niece, Marissa Padillo-Chua, served as the firm's manager. Marissa is married to Wilson Chua, brother of Renita Chua, herein petitioners.

One of Marissa's functions was to evaluate and recommend loan applications for approval by respondents. Once a loan application had been approved, respondents would authorize the release of a check signed by them or their authorized signatory, a certain Mila Manalo.Sometime in September 1999, a post-audit was conducted. It was found that Marissa was engaged in illegal activities. Some of the borrowers whose loan applications she recommended for approval were fictitious and their signatures on the checks were spurious. Marissa's *modus operandi* was to alter the name of the payee appearing on the check by adding another name as an alternative payee. This alternative payee would then personally encash the check with the drawee bank. The cash amounts received were turned over to Marissa or her husband Wilson for deposit in their personal accounts. To facilitate encashment, Marissa would sign the check to signify to the bank that she personally knew the alternative payee. The alternative payees included employees of Wilson or his friends. The

total amount embezzled reached ₱7 million.

Respondents filed complaints against petitioners and several others with the NBI in Lucena City. In turn, the NBI forwarded their complaints to the Office of the City Prosecutor, same city, for preliminary investigation. In a Resolution, Lucena City Prosecutor Romeo A. Datu found a prima facie case of Estafa thru Falsification of Commercial Documents. Forthwith, the City Prosecutor filed an Information for *estafa* against Marissa, Wilson, and Renita with the Regional Trial Court of Lucena City.

Believing that a more serious offense should have been charged against petitioners, respondents interposed an appeal to the Secretary of Justice who issued a Resolution which directed to file the Information of the complex crime of *estafa* through falsification of commercial documents defined and penalized under Article 315 par. 1(b) in relation to Articles 171 and 172 (58 counts) against respondent Marissa Padillo-Chua and to cause the withdrawal of the Information of *estafa* through falsification of commercial documents against respondents Wilson Chua and Renita Chua.

Respondents then filed a Petition for Certiorari. TheCA found that it overlooked certain facts and circumstances which, if considered, would establish probable cause against Wilson and Renita. The Court of Appeals identified these facts to be: (1) Marissa's consistent practice of depositing checks with altered names of payees to the respective accounts of Wilson Chua and Renita Chua; (2) considering that Wilson and Marissa are husband and wife, it can be inferred that one knows the transactions of the other; and (3) Wilson had full knowledge of the unlawful activities of Marissa.

ISSUE:

Whether or not the Court of Appeals erred in compelling the Secretary of Justice to include in the Information Wilson and Renita. (NO)

RULING:

Section 5, Rule 110 of the 200 Rules of Criminal Procedure, as amended, partly provides that "All criminal actions either commenced by a complaint or information shall be prosecuted under the direction and control of a public prosecutor." The rationale for this rule is that since a criminal offense is an outrage to the sovereignty of the State, it necessarily follows that a representative of the State shall direct and control the prosecution thereof.

Having been vested by law with the control of the prosecution of criminal cases, the public prosecutor, in the exercise of his functions, has the power and discretion to: (a) determine whether a *prima facie* case exists; (b) decide which of the conflicting testimonies should be believed free from the interference or control of the offended party;and (c) subject only to the right against self-incrimination, determine which witnesses to present in court. Given his discretionary powers, a public prosecutor cannot be compelled to file an Information where he is not convinced that the evidence before him would warrant the filing of an action in court. For while he is bound by his oath of office to prosecute persons who, according to complainant's evidence, are shown to be guilty of a crime, he is likewise duty-bound to protect innocent persons from groundless, false, or malicious prosecution.

We must stress, however, that the public prosecutor's exercise of his discretionary powers is not absolute.

First, the resolution of the investigating prosecutor is subject to appeal to the Secretary of Justice who, under the Administrative Code of 1987, as amended, exercises control and supervision over the investigating prosecutor. Thus, the Secretary of Justice may affirm, nullify, reverse, or modify the ruling of said prosecutor." In special cases, the public prosecutor's decision may even be reversed or modified by the Office of the President.*Second*, the Court of Appeals may review the resolution of the Secretary of Justice on a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, on the ground that he committed grave abuse of discretion amounting to excess or lack of jurisdiction.

We have carefully examined the Resolution of the Secretary of Justice dated January 3, 2000 wherein he ruled that there was no probable cause to hold Wilson Chua and Renita Chua for *estafa* through falsification of commercial documents. As found by the Court of Appeals, the Secretary of Justice either overlooked or patently ignored the following circumstances: (1) Marissa's practice of depositing checks, with altered names of payees, in the respective accounts of Wilson and Renita Chua; (2) the fact that Wilson and Marissa are husband and wife makes it difficult to believe that one has no idea of the transactions entered into by the other; and (3) the affidavit of Ernesto Alcantara dated November 26, 1998 confirming that Wilson had knowledge of Marissa's illegal activities.

Indeed, as we ruled in *Sanchez v. Demetriou*, not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case. The only possible exception to this rule is where there is an unmistakable showing of grave abuse of discretion on the part of the prosecutor, as in this case.

BUREAU OF CUSTOMS, *Petitioner*, -versus- PETER SHERMAN, MICHAEL WHELAN, TEODORO B. LINGAN, ATTY. OFELIA B. CAJIGAL and the COURT OF TAX APPEALS, *Respondents*. G.R. No. 190487, THIRD DIVISION, April 13, 2011, CARPIO MORALES, *J.*

All criminal actions commenced by complaint or information are prosecuted under the direction and control of public prosecutors. In the prosecution of special laws, the exigencies of public service sometimes require the designation of special prosecutors from different government agencies ***to assist*** *the public prosecutor. The designation does not, however, detract from the public prosecutor having control and supervision over the case.*

FACTS:

Mark Sensing Philippines, Inc. caused the importation of 255, 870,000 pieces of finished bet slips and 205, 200 rolls of finished thermal papers from June 2005 to January 2007. MSPI facilitated the release of the shipment from the Clark Special Economic Zone, where it was brought, to the PCSO for its lotto operations in Luzon. MSPI did not pay duties or taxes, however, prompting the Bureau of Customs to file, under its Run After The Smugglers Program, a criminal complaint before the Department of Justice against herein respondents MSPI Chairman Peter Sherman, Managing Director Michael Whelan, Country Manager Atty. Ofelia B. Cajigal and Finance Manager and Corporate Secretary Teodoro B. Lingan, along with Erick B. Ariarte and Ricardo J. Ebuna and Eugenio Pasco, licensed customs broker who acted as agents of MSPI, for violation of Section 3601 vis-à-vis Sections 2530 (f) and (l) 5and 101 (f) of the Tariff and Customs Code of the Philippines, as amended and Republic Act No. 7916.

State Prosecutor Rohaira Lao-Tamano found probable cause against respondents and accordingly

recommended the filing of Information against them.Respondents filed a petition for reviewbefore the Secretary of Justice during the pendency of which the Information was filed before the Court of Tax Appeals.The Secretary of Justice reversed the State Prosecutor's Resolution and accordingly directed the withdrawal of the Information.

In the meantime, Prosecutor Lao-Tamano filed before the CTA a Motion to Withdraw Information with Leave of Court.The CTAgranted the withdrawal of, and accordingly dismissed the Information.Petitioner's motion for reconsideration filed on September 22, 2009 was Noted Without Action by the CTA by Resolution.

ISSUE:

Whether or not the CTA gravely abused its discretion when it only noted without action petitioner's motion for reconsideration. (NO)

RULING:

It is well-settled that prosecution of crimes pertains to the executive department of the government whose principal power and responsibility is to insure that laws are faithfully executed. Corollary to this power is the right to prosecute violators.

All criminal actions commenced by complaint or information are prosecuted under the direction and control of public prosecutors. In the prosecution of special laws, the exigencies of public service sometimes require the designation of special prosecutors from different government agencies **to assist** the public prosecutor. The designation does not, however, detract from the public prosecutor having control and supervision over the case.

As stated in the above-quoted ratio of the October 14, 2009 Resolution of the CTA, it noted without action petitioner's motion for reconsideration, entry of judgment having been made as no Motion for Execution was filed by the State Prosecutor.

By merely noting without action petitioner's motion for reconsideration, the CTA did not gravely abuse its discretion. For, as stated earlier, a public prosecutor has control and supervision over the cases. The participation in the case of a private complainant, like petitioner, is limited to that of a witness, both in the criminal and civil aspect of the case.

Parenthetically, petitioner is not represented by the Office of the Solicitor General (OSG) in instituting the present petition, which contravenes established doctrinethat "the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers."

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- GUALBERTO CINCO y SOYOSA, *Accused-Appellant.*
G.R. No. 186460, THIRD DIVISION, December 4, 2009, CHICO-NAZARIO, *J.*

With respect to the date of the commission of the offense, Section 11, Rule 110 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date the offense was committed except when it is a material ingredient of the offense, and that the offense may be alleged to have been committed on a date as near as possible to the actual date of its

commission.

FACTS:

An informationwas filed before the RTC accusing appellant of acts of lasciviousness.Subsequently, two separate informations were filed with the RTC charging appellant with rape. Thereafter, the aforementioned cases were consolidated. When arraigned, appellant, assisted by counsel de oficio, pleaded "not guilty" to the charges. Trial on the merits followed.

After trial, the RTC rendered a Decision convicting appellant of rape in Criminal Case Nos. Q-99-89097 and Q-89098. Appellant was sentenced to reclusion perpetua in both cases. He was also ordered to pay AAA in each of the cases the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages. With respect to Criminal Case No. Q-98-79944 for acts of lasciviousness, appellant was acquitted therein for failure of the prosecution to establish said charge. Appellant appealed to the Court of Appeals. TheCA promulgated its Decision affirming in toto the RTC Decision.

Appellant maintains that the approximate times and dates of the commission of the offense must be stated in the informations; that the informations in the instant cases do not state the approximate times and dates of the alleged rapes; that although AAA testified that the first rape occurred nearly before All Saints Day of 1998, the information in Criminal Case No. Q-89098, nonetheless, states that such incident transpired on 1 November 1998; that the informations are fatally defective; that the times and dates of the alleged rapes are so indefinite, thereby depriving appellant of the opportunity to prepare for his defense; that appellant's constitutional right to be informed of the nature and cause of the accusation against him was violated; and that by reason of the foregoing, appellant is entitled to an acquittal.

ISSUE:

Whether or not the trial court gravely erred in not finding the informations under Criminal Case Nos. Q-99-89097 and Q-99-89098 as insufficient to support a judgment of conviction for the prosecution's failure to state with particularity the approximate dates of the commission of the alleged rapes.(NO)
RULING:

An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court. To be considered as valid and sufficient, an information must state the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. The purpose of the requirement for the information's validity and sufficiency is to enable the accused to suitably prepare for his defense, since he is presumed to have no independent knowledge of the facts that constitute the offense.

With respect to the date of the commission of the offense, Section 11, Rule 110 of the Revised Rules of Criminal Procedure specifically provides that it is not necessary to state in the information the precise date the offense was committed except when it is a material ingredient of the offense, and that the offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

In rape cases, failure to specify the exact dates or times when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission. As such, the date or time need not be stated with absolute accuracy. It is sufficient that the complaint or information states that the crime has been committed at any time as near as possible to the date of its actual commission.

This Court has upheld complaints and informations in prosecutions for rape which merely alleged the month and year of its commission. There is no cogent reason to deviate from these precedents, especially so when the prosecution has established the fact that the rape under Criminal Case No. Q-99-89097 was committed prior to the date of the filing of the information in the said case. Hence, the allegation in the information under Criminal Case No. Q-99-89097, which states that the rape was committed on or about November 1998, is sufficient to affirm the conviction of appellant in the said case.

Appellant's allegation of variance between the date of the commission of rape in Criminal Case No. Q-99-89098 and that established by the evidence during the trial is erroneous. AAA categorically testified that she was raped by appellant on 1 November 1998. This is consistent with the allegation in the information under Criminal Case No. Q-99-89098 that appellant raped AAA on 1 November 1998.

VISITACION L. ESTODILLO, ET AL., *Complainants*, -versus- JUDGE TEOFILO D. BALUMA, *Respondent*.
A.M. No. RTJ-04-1837, SECOND DIVISION, March 23, 2004, AUSTRIA-MARTINEZ, *J*.

There is no requirement that the information be sworn to. Otherwise, the rules would have so provided as it does in a complaint which is defined as a "sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated".

FACTS:

In a verified complaint, Jovelyn Estudillo assisted by her mother, Visitacion L. Estodillo, charges Judge Teofilo D. Baluma with Gross and Inexcusable Ignorance of the Law.Complainant alleges that her administrative complaint arose from the dismissal of Criminal Case No. 11627 for Other Acts of Child Abuseby respondent Judge of the Regional Trial Court of Bohol, Branch 1, a Family Court.

The criminal case was originally filed for preliminary investigation with the 2nd Municipal Circuit Trial Court of Tubigon-Clarin, Bohol. After the requisite preliminary investigation, Judge James Stewart E. Himalaloan found that there was sufficient ground to hold the herein accused for trial for the offense of Other Acts of Child Abuse defined in Sec. 10 (1), Article VI of Republic Act No. 7610.The record of the case was transmitted to the Office of the Provincial Prosecutor where, after a review by Third Assistant Provincial Prosecutor, Macario I. Delusa, he failed an Information.Respondent dismissed the Information.

The prosecution through Prosecutor Delusa filed a Motion for Reconsideration and Revivalalleging that there was no necessity for the Information to be under oath since he merely concurred with the resolution of the investigating judge and that he "has properly subscribed and signed the Information

with the approval of the Provincial Prosecutor". Respondent issued an Ordergranting the motion for reconsideration, reinstating and reviving the case but at the same time requiring the public prosecutor to file a new information "incorporating the formalities called for under Rule 112, Section 4 and the circular of its department implementing the pertinent laws on the matter, within ten (10) days from notice hereof."

ISSUE:

Whether or not an Information needs to be under oath. (NO)

RULING:

Section 4, Rule 110 of the Revised Rules of Criminal Procedure provides:

> Sec. 4. *Information* defined. – An information is an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court.

There is no requirement that the information be sworn to. Otherwise, the rules would have so provided as it does in a complaint which is defined as a "sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated".In a case, we ruled that the information need not be under oath, the reason therefore being principally that the prosecuting officer filing it is charged with the special duty in regard thereto and is acting under the special responsibility of his oath of office.Clearly, respondent had confused an information from a complaint.

A perusal of the subject Information shows that it was subscribed or signed by Prosecutor Macario I. Delusa. It is thus clear that respondent erred in dismissing the subject Information on the ground that it was not under oath.

RENATO CUDIA, *Petitioner*, - versus - THE COURT OF APPEALS, The HON. CARLOS D. RUSTIA, in his capacity as Presiding Judge of the Regional Trial Court Branch LVI, Angeles City, *Respondents.*
G.R. No. 110315, THIRD DIVISION, January 16, 1998, ROMERO, *J.*

There must have been a valid and sufficient complaint or information in the former prosecution. If, therefore, the complaint or information was insufficient because it was so defective in form or substance that the conviction upon it could not have been sustained, its dismissal without the consent of the accused cannot be pleaded. As the fiscal had no authority to file the information, the dismissal of the first information would not be a bar to petitioner's subsequent prosecution. Jeopardy does not attach where a defendant pleads guilty to a defective indictment that is voluntarily dismissed by the prosecution.

FACTS:

On June 28, 1989, petitioner was arrested in Mabalacat allegedly for possessing an unlicensed revolver. He was brought to Camp Pepito, Sto. Domingo, Angeles City, where he was detained. A preliminary investigation was thereafter conducted by an investigating panel of prosecutors. As a result thereof, the City Prosecutor of Angeles City filed an information against him for illegal possession of firearms and ammunition. The case was raffled to Branch 60 of Angeles RTC.

Upon his arraignment on August 14, 1989, petitioner pleaded "not guilty" to the charges. During the ensuing pre-trial, the court called the attention of the parties to the fact that, contrary to the information, petitioner had committed the offense in Mabalacat, and not in Angeles City. The judge ordered the re-raffling of the case to a branch assigned to criminal cases involving crimes committed outside of the city. Thereafter, the case was assigned to Branch 56 of the Angeles City RTC. On October 31, 1989 however, the provincial prosecutor of Pampanga also filed an information charging petitioner with the same crime, which was likewise raffled to Branch 56. This prompted the prosecutor in Criminal Case No. 11542 to file a Motion to Dismiss/Withdraw the Information alleging that two separate informations for the same offense had been filed against petitioner. The motion was granted.

On May 21, 1990, petitioner filed a Motion to Quash Criminal Case No. 11987 on the ground that his continued prosecution for the offense of illegal possession of firearms and ammunition for which he had been arraigned in Criminal Case No. 11542, and which had been dismissed despite his opposition would violate his right not to be put twice in jeopardy of punishment for the same offense. The trial court denied the motion to quash, which was affirmed by the CA.

ISSUE:

Whether or not there was double jeopardy.

RULING:

In order to successfully invoke the defense of double jeopardy, the following requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or a frustration thereof.
In determining when the first jeopardy may be said to have attached, it is necessary to prove the existence of the following:

(a) Court of competent jurisdiction
(b) Valid complaint or information
(c) Arraignment
(d) Valid plea
(e) The defendant was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused.

It is undisputed that petitioner was arraigned in Criminal Case No. 11542, that he pleaded "not guilty" therein, and that the same was dismissed without his express consent, nay, over his opposition even. The court may thus limit the discussion to determining whether the first two requisites have been met.

As to the first requisite, it is necessary that there be a court of competent jurisdiction, for jurisdiction to try the case is essential to place an accused in jeopardy. The Court of Appeals and the Solicitor General agreed that Branch 60, which originally had cognizance of Criminal Case No. 11542, had no jurisdiction over the case. Although both Branches 60 and 56 are sitting in Angeles City, it is Branch

56 which has jurisdiction to try offenses committed in Mabalacat, Pampanga. Petitioner was arraigned before Branch 60, not Branch 56.

With respect to the second requisite, however, it is plainly apparent that the City Prosecutor of Angeles City had no authority to file the first information, the offense having been committed in the Municipality of Mabalacat, which is beyond his jurisdiction. Presidential Decree No. 1275, in relation to Section 9 of the Administrative Code of 1987, pertinently provides that:

Section 11. The provincial or the city fiscal shall:

x x x

b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of all penal laws and ordinances within their respective jurisdictions and have the necessary information or complaint prepared or made against the persons accused. In the conduct of such investigations he or his assistants shall receive the sworn statements or take oral evidence of witnesses summoned by subpoena for the purpose.

It is thus the Provincial Prosecutor of Pampanga, not the City Prosecutor, who should prepare informations for offenses committed within Pampanga but outside of Angeles City. **An information, when required to be filed by a public prosecuting officer, cannot be filed by another**. **It must be exhibited or presented by the prosecuting attorney or someone authorized by law. If not, the court does not acquire jurisdiction.** By clear implication, if not by express provision of the Rules of Court, and by a long line of uniform decisions, questions relating to want of jurisdiction may be raised at any stage of the proceeding. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the petitioner and the subject matter of the accusation. In consonance with this view, an infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent

In light of the foregoing principles, there is thus no breach of the constitutional prohibition against twice putting an accused in jeopardy of punishment for the same offense for the simple reason that the absence of authority of the City Prosecutor to file the first information meant that petitioner could never have been convicted on the strength thereof.

GIRLIE M. QUISAY, *Petitioner*, - versus - PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 216920, FIRST DIVISION, January 13, 2016, PERLAS-BERNABE, *J.*

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

FACTS:

On December 28, 2012, the Office of the City Prosecutor of Makati City issued a Pasiya or Resolution finding probable cause against petitioner for violation of Section 10 of RA 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." Consequently, a *Pabatid Sakdal* (Information) was filed before the RTC charging petitioner of such crime.

Petitioner moved for the quashal of the Information against her on the ground of lack of authority of the person who filed the same before the RTC. In support of her motion, petitioner pointed out that the Pasiya issued by the OCP-Makati was penned by Assistant City Prosecutor Estefano H. De La Cruz (ACP De La Cruz) and approved by Senior Assistant City Prosecutor Edgardo G. Hirang (SACP Hirang), while the *Pabatid Sakdal* was penned by ACP De La Cruz, without any approval from any higher authority, albeit with a Certification claiming that ACP De La Cruz has prior written authority or approval from the City Prosecutor in filing the said Information. In this regard, petitioner claimed that nothing in the aforesaid *Pasiya* and *Pabatid Sakdal* would show that ACP De La Cruz and/or SACP Hirang had prior written authority or approval from the City Prosecutor to file or approve the filing of the Information against her. As such, the Information must be quashed for being tainted with a jurisdictional defect that cannot be cured. The OCP-Makati countered that the review prosecutor, SACP Hirang, was authorized to approve the Pasiya pursuant to OCP-Makati Office Order No. 32. Further, it maintained that the Pabatid Sakdal was filed with the prior approval of the City Prosecutor as shown in the Certification in the Information itself.

The RTC denied petitioner's motion to quash for lack of merit. It found the Certification attached to the Pabatid Sakdal to have sufficiently complied with Section 4, Rule 112 of the Rules of Court which requires the prior written authority or approval by, among others, the City Prosecutor, in the filing of Informations. The CA affirmed the RTC ruling. It held that pursuant to Section 9 of RA 10071, otherwise known as the "Prosecution Service Act of 2010," as well as OCP-Makati Office Order No. 32, the City Prosecutor of Makati authorized SACP Hirang to approve the issuance of, inter alia, resolutions finding probable cause and the filing of Informations before the courts. As such, SACP Hirang may, on behalf of the City Prosecutor, approve the Pasiya which found probable cause to indict petitioner of violation of Section 10 of RA 7610.

ISSUE:

Whether or not ACP Dela Cruz has an authority to file the information

HELD:

NO, Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that the filing of a complaint or information requires a prior written authority or approval of the named officers therein before a complaint or information may be filed before the courts, thus:

SECTION 4. Resolution of investigating prosecutor and its review.

xxx

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Thus, as a general rule, complaints or informations filed before the courts without the prior written authority or approval of the foregoing authorized officers renders the same defective and, therefore, subject to quashal pursuant to Section 3 (d), Rule 117 of the same Rules (d) That the officer who filed the information had no authority to do so. Unfortunately, the same could not be said of the Pabatid Sakdal or Information filed before the RTC, as there was no showing that it was approved by either

the City Prosecutor of Makati or any of the OCP-Makati's division chiefs or review prosecutors. All it contained was a Certification from ACP De La Cruz which stated, among others, that "*DAGDAG KO PANG PINATUTUNAYAN na angpaghahain ng sakdal na ito ay may nakasulat na naunang pahintulot o pagpapatibay ng Panlunsod na Taga-Usig*".

In the cases of People v. Garfin, Turingan v. Garfin, and Tolentino v. Paqueo the Court had already rejected similarly-worded certifications, uniformly holding that despite such certifications, the Informations were defective as it was shown that the officers filing the same in court either lacked the authority to do so or failed to show that they obtained prior written authority from any of those authorized officers enumerated in Section 4, Rule 112 of the 2000 Revised Rules of Criminal Procedure.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus - DANILO FELICIANO, JR., JULIUS VICTOR MEDALLA, CHRISTOPHER SOLIVA, WARREN L. ZINGAPAN, AND ROBERT MICHAEL BELTRAN PROMULGATED: ALVIR, ACCUSED-APPELLANTS., *Respondents*.
GR. No. 196735, SPECIAL THIRD DIVISION, August 03, 2016, LEONEN, *J.*

Conspiracy does not require that all persons charged in the information be found guilty. It only requires that those who were found guilty conspired in committing the crime. The acquittal of some of the accused does not necessarily preclude the presence of conspiracy. In this case, Of the 10 accused in the Informations, four were acquitted. The trial court was convinced that they were not present during the commission of the crime. Conspiracy cannot attach to those who were not properly identified. However, the respondents were positively identified by eyewitnesses before the trial court.

FACTS:

This case involves separate Motions for Reconsideration.

(Facts based on SC's May 5, 2014 Decision; G.R. No. 196735):

On December 8, 1994, at around 12:30 to 1:00 in the afternoon, seven (7) members of the Sigma Rho fraternity were eating lunch at the Beach House Canteen, near the Main Library of the University of the Philippines, Diliman, when they were attacked by several masked men carrying baseball bats and lead pipes. Some of them sustained injuries that required hospitalization. One of them, Dennis Venturina, died from his injuries.

An information for murder was filed against several members of the Scintilla Juris fraternity and separate informations were also filed against them for the attempted and frustrated murder of Sigma Rho fraternity members.
RTC found Alvir, Feliciano Jr., Soliva, Medalla and Zingapan guilty beyond reasonable doubt of murder and attempted murder. Others were acquitted. The case against Guerrero was ordered archived by the court until his apprehension. CA affirmed RTC's decision.

To recall, the SC affirmed the Court of Appeals Decision finding accused-appellants guilty beyond reasonable doubt for the murder of Dennis Venturina (hazing victim). However, the SC modified its finding that accused-appellants were only guilty of slight physical injuries in relation to private complainants Leandro Lachica, Cristobal Gaston, Jr., and Cesar Mangrobang, Jr. Instead, the SC upheld the trial court's Decision which found accused-appellants guilty beyond reasonable doubt of the

attempted murder of private complainants Leandro Lachica (Lachica), Arnel Fortes (Fortes), Mervin Natalicio (Natalicio), Cristobal Gaston, Jr. (Gaston), and Cesar Mangrobang, Jr. (Mangrobang, Jr.).

Alvir, Zingapan, and Soliva separately filed their Motions for Reconsideration. Atty. Estelito Mendoza, counsel for Zingapan, requested information on the composition of the Division trying this case. At that time, the Decision was not yet published in the Supreme Court website. Atty. Estelito Mendoza's request was denied under Rule 7, Section 3 of the Internal Rules of the Supreme Court, which mandates that results of a raffle, including the composition of the Division, are confidential in eriminal cases where the trial court imposes capital punishment.

Zingapan moved to elevate the case to the SC Court En Banc. The Motion was denied for lack of merit. Meanwhile, Alvir moved for modification of judgment, arguing on his innocence and praying for his acquittal. Soliva argues that his conviction was merely based on private complainant Natalicio's sole testimony, which he alleges was doubtful and inconsistent. He points out that prosecution witness Ernesto Paolo Tan (Tan) was able to witness the attack on Natalicio, but was unable to identify him as the attacker.

ISSUE:

Whether accused-appellants presented substantial arguments in their Motions for Reconsideration as to warrant the reversal of this Court's May 5, 2014 Decision.

RULING:

(a) The testimony of a single witness, as long as it is credible and positive, is enough to prove the guilt of an accused beyond reasonable doubt. Soliva argues that Natalicio was not able to identify his attackers since he was seen by Tan" lying face down as he was being attacked. On the contrary, Natalicio's and Tan's testimonies were consistent as to Natalicio's position during the attack. Tan failed to identify the attackers only because he did not know their names. His testimony corroborates Natalicio's testimony that some of the attackers were masked and some were not, although Tan could not identify them because he was not familiar with their names.

Another witness, Darwin Asuncion, was a third year student at the University of the Philippines and was also at Beach House Canteen during the incident. He testified that some attackers were wearing masks while some were not. Asuncion's testimony corroborates that of defense witness Frisco Capilo, who testified that before the incident, the attackers were wearing masks, but after the incident, he saw some wearing masks and some who did not.

It is in line with human experience that even while Lachica was parrying the blows, he would strive to identify his attackers. As has been previously stated by this Court, it is the most natural reaction for victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from their memory.

Lachica testified that he was able to identify Alvir while he was being attacked. When Lachica ran away and looked back at the scene of the crime, he was also able to identify two more of the attackers, Zingapan and Medalla. Accused-appellants were positively identified by private complainants.

Private complainants' testimonies were clear and categorical. On this issue, there is no cogent reason to reverse the May 5, 2014 Decision.

(b) Zingapan's main argument hinges on the sufficiency of the Information filed against him, which, he argues, violated his constitutional right to be informed of the nature and cause of the accusation against him.

For an information to be sufficient, Rule 110, Section 6 of the Rules of Criminal Procedure requires that it state: the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

Here, the aggravating circumstance of "masks and/or other forms of disguise" was alleged in the Informations to enable the prosecution to establish that the attackers intended to conceal their identities. Once this is established, the prosecution needed to prove how the witnesses were able to ft identify the attackers despite the concealment of identity. In criminal cases, disguise is an aggravating circumstance because, like nighttime, it allows the accused to remain anonymous and unidentifiable as he carries out his crimes. The introduction of the prosecution of testimonial evidence that tends to prove that the accused were masked but the masks fell off does not prevent them from including disguise as an aggravating circumstance. What is important in alleging disguise as an aggravating circumstance is that there was a concealment of identity by the accused. The inclusion of disguise in the information was, therefore, enough to sufficiently apprise the accused that in the commission of the offense they were being charged with, they tried to conceal their identity.

Zingapan was sufficiently informed that he was being charged with the death of Dennis Venturina, committed through the circumstances provided. Zingapan's right to be informed of the cause or nature of the accusation against him was not violated. The inclusion of the aggravating circumstance of disguise in the Informations did not prevent him from presenting his defense of alibi.

(c) Alvir argues that this Court erred in finding conspiracy among all the accused since the trial court acquitted those who were identified by Mangrobang, Jr. This argument, however, is non sequitur.

Conspiracy does not require that all persons charged in the information be found guilty. It only requires that those who were found guilty conspired in committing the crime. The acquittal of some of the accused does not necessarily preclude the presence of conspiracy. Of the 10 accused in the Informations, four were acquitted. The trial court was convinced that they were not present during the commission of the crime. Conspiracy cannot attach to those who were not properly identified. However, Alvir, Zingapan, Soliva, Medalla, and Danilo Feliciano, Jr. were positively identified by eyewitnesses before the trial court. The prosecution's evidence was enough to convince the trial court, the Court of Appeals, and this Court that they were present during the December 8, 1994 incident and that they committed the crime charged in the Informations.

The trial court's acquittal of some of those charged in the Informations has no bearing on finding that Alvir, Zingapan, Soliva, Feliciano, and Medalla are guilty beyond reasonable doubt. Soliva, however, argues that the May 5, 2014 Decision did not apply to those who did not appeal to this Court, namely: Feliciano and Medalla.

In this instance, the application of the higher penalty to accused-appellants becomes problematic when only three (3) of them actually appealed to this Court. The problem lies with the effect of the prohibition of death penalty on the current rules on appeal in the Rules of Criminal Procedure. The amendments introduced in the Amended Rules to Govern Review of Death Penalty Cases still stand even if, as the Court has previously mentioned, "death penalty cases are no longer operational." However, this Court ruled that the appeal could still be withdrawn as cases where the penalty imposed is reclusion perpetua or higher is not subject to this Court's mandatory review.

Since the case of accused-appellants is not subject to the mandatory review of this Court, the rule that neither the accused nor the courts can waive a mandatory review is not applicable. Consequently, accused-appellants' separate motions to withdraw appeal may be validly granted. Here, the trial court's ruling mandated an automatic review and the case was forwarded to the Court of Appeals per Mateo and the Amended Rules to Govern Review of Death Penalty Cases. As the death penalty was abolished during the pendency of the appeal before the Court of Appeals, the highest penalty the Court of Appeals could impose was reclusion perpetua. Any review of the Court of Appeals Decision by this Court will never be mandatory or automatic. In effect, while the SC can review the case in its entirety and examine its merits, the court cannot disturb the penalties imposed by the Court of Appeals on those who did not appeal, namely, Feliciano and Medalla. As the May 5, 2014 Decision was unfavorable to accused-appellants, those who did not appeal must not be affected by the judgment. The penalty of arresto menor imposed by the Court of Appeals on Feliciano and Medalla stands.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus - ROLLY CANARES Y ALMANARES, *Accused-Appellant*.
G.R. NO. 174065, SECOND DIVISION, February 18, 2009, BRION, *J.*

Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed, except when the date of commission is a material element of the offense. The offense may thus be alleged to have been committed on a date as near as possible to the actual date of its commission. ***The precise date of the commission of the rape is not an essential element of the crime.*** *In this case, the failure to allege the precise date of the commission of rape by AAA will not warrant the acquittal of the accused. In addition to that, even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during the trial and any objection based on this ground must be deemed waived as a result of accused-appellant's failure to object before arraignment.*

FACTS:

AAA was only about 9 or 10 years old when Canares, a helper in AAA's grandmother's house at Silang, Cavite, allegedly first sexually abused her. The sexual intercourse took place at around midnight sometime in 1992; AAA could no longer recall the exact date. AAA and her cousins were then the only occupants in their grandmother's house and were in bed sleeping. AAA awoke and found Canares lying beside them. Canares undressed her, removed her shorts and panty, and then had sexual intercourse with her. AAA kept the incident to herself because Canares threatened to kill her. Canares allegedly repeated the sexual abuse more than ten times between the first incident in 1992 and 1995.

He stopped from 1996-1999. AAA attributed the gap to the lack of opportunity on Canares' part; her uncle was then always at home. Except for the sexual abuse in 1992, AAA could no longer remember

the details of the other incidents. She was certain, however, that there was penile penetration in every incident.

The last incident that immediately gave rise to the present charges occurred on March 25, 1999. AAA met Canares at the stairs of her grandmother's house as Canares was on his way to the bodega of the house which he used as his sleeping quarters. Inside, Canares embraced her and pulled down her shorts. AAA resisted and pushed against Canares as she also shouted for help. BBB - AAA's aunt - came to her rescue and hit Canares on the head with a flower vase. Triggered by this incident, AAA disclosed to her mother and relatives the sexual abuse she had long suffered in the hands of Canares.

On March 26, 2000, AAA went to the PGH Child Protection Unit for medical examination. The findings showed that she had a healed laceration at the 6:00 position of her hymen indicating previous penetration. On March 27, 2000, AAA and BBB executed their respective Sinumpaang Salaysay about Canares' sexual abuses before the police authorities.

Canares denied the accusations against him.2 He claimed that the charges were filed against him at the instance of AAA's grandmother and uncle because of the nonpayment of his salary as a farm hand and as a tricycle driver. The RTC gave greater credence to the prosecution's evidence, particularly, the testimony of AAA which it found to be straightforward, truthful, and convincing. The CA affirmed with modification Canares' rape conviction.

Canares contends that he should not have been convicted of rape because the Information was defective: it failed to specify with certainty when the alleged rape was committed. He argues that the allegation that the rape was committed "sometime between the year 1992 to 1995" is very broad, considering particularly AAA's testimony that she was raped more than 10 times. He posits that since the specific incident of rape for which he was convicted is uncertain, the doubt should be resolved in favor of his acquittal.

ISSUE:

Whether or not the accused-appellant should be convicted of rape despite the failure to allege the specific date and time of the incident in the information.

RULING:

Procedural Issue

The argument that the Information in Criminal Case No. TG-3255-99 is defective for the prosecution's failure to allege the date and time of the rape is far from novel. The SC have repeatedly met and debunked this line of argument in rape cases.

An information, under Section 6, Rule 110 of the 2000 Revised Rules on Criminal Procedure, is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed, except when the date of commission is a

material element of the offense. The offense may thus be alleged to have been committed on a date as near as possible to the actual date of its commission. At the minimum, an indictment must contain all the essential elements of the offense charged to enable the accused to properly meet the charge and duly prepare for his defense.

People v. Lizada, specifically involving the charge of rape, followed the above general principle; the SC stated that an information for rape is not rendered defective for failure to specify the exact date when the rape was committed. The reason for this is plain**: the precise date of the commission of the rape is not an essential element of the crime.** The gravamen of the crime of rape is carnal knowledge of the woman under any of the circumstances provided by law.

In this regard, AAA unequivocally and repeatedly stated that the first sexual intercourse Canares had with her occurred sometime in 1992. Following Bugayong, this statement removes from Canares any reason to complain that he was not adequately informed of the charge against him before he was arraigned. The Information referred to a rape that started in 1992 and this first incident was sufficiently narrated in AAA's statements before and after arraignment. Canares never raised this argument in any motion filed with the trial court before his arraignment. He likewise fully participated in the trial on the merits without raising this argument; he cross-examined the prosecution witnesses and formally objected to the prosecution's offer of evidence. Raised for the first time in this appeal, the SC can only label the argument as a desperation move that is too late in the day for the defense to make.

In any event, even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during the trial and any objection based on this ground must be deemed waived as a result of accused-appellant's failure to object before arraignment.

Substantive Issue

To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the complainant; second, the identity of the accused; and last but not the least, the carnal knowledge between the accused and the complainant.

The first and second elements have been established by the presentation of a Certification from the Office of the Municipal Civil Registrar of Silang, Cavite dated April 21, 1999 stating that AAA was born on September 8, 1982. Hence, she was only 9, or at most 10, years old when the rape was committed in 1992. In and out of court, she consistently identified Canares as her rapist.

Carnal knowledge is proven by proof of the entry or introduction of the male organ into the female organ; the "touching" or "entry" of the penis into the labia majora or the labia minora of the pudendum of the victim's genitalia constitutes consummated rape. The prosecution proved this element when AAA narrated during the trial the details of her rape, committed sometime in 1992. Parenthetically, the pain that AAA said she suffered is, in itself, an indicator of the commission of rape. Both the RTC and CA found the above testimony straightforward, truthful and convincing. AAA's identification of Canares as the culprit was positive, categorical and consistent and devoid of any showing of ill-motive on her part. The court finds no reason to disturb these findings. Canares mainly interposed the defense of denial, an inherently weak defense that must be buttressed by strong evidence of non-culpability to merit credibility.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus - OLIVIA ALETH GARCIA CRISTOBAL, *Accused-Appellant.*
G.R. No. 159450, THIRD DIVISION, March 30, 2011, BERSAMIN, *J.*

(a) It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.In this case, the information was sufficient because it stated the approximate time of the commission of the offense through the words "on or about the 2nd of January, 1996,".

(b) When the accused files motion to dismiss (demurrer to evidence) without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. In this case, the RTC properly declared the accused to have waived her right to present evidence because she did not obtain the express leave of court for her demurrer to evidence, thereby reflecting her voluntary and knowing waiver of her right to present evidence.

(c)Under Section 30, Rule 130 of the Rules of Court, a confession is a declaration of an accused acknowledging guilt for the offense charged, or for any offense necessarily included therein. In this case, the letter written by the accused, admitting the crime, is admissible in evidence. There was no need for a counsel to have assisted the accused when she wrote the letter because she spontaneously made it while not under custodial investigation.

FACTS:

Among the six tellers in the Angeles City main branch of Prudential Bank, accused-appellant was the only teller assigned to handle dollar deposits and withdrawals. On January 2, 1996, senior audit examiner Virgilio Frias inventoried the cash accountabilities of the said branch by manually counting the money in each of the tellers' cash boxes. While the books of the branch showed that appellant had a cash accountability of $15,040.52, the money in her cash box was only $5,040.52. Appellant explained that there was a withdrawal of $10,000.00 on December 29, 1995 after the cutoff time which would be treated as a withdrawal on January 2, 1996. Appellant then presented to Frias a withdrawal memo dated January 2, 1996 showing a withdrawal of $10,000.00 from Dollar Savings Account of Adoracion Tayag and her co-signatory, Apolinario Tayag.

On January 3, 1996, appellant showed the aforesaid withdrawal memo to the branch cashier, Noel Cunanan. Noticing that the said withdrawal memo did not contain the required signatures of two bank officers, Cunanan asked appellant what the nature of the transaction was. Appellant replied that the depositor had instructed her to withdraw $10,000.00 from his account on January 3, 1996, through his driver whom he had sent to the bank. Cunanan, however, did not notice that while the withdrawal was supposed to have been made on January 3, 1996, the withdrawal memo was dated January 2, 1996. Cunanan then instructed appellant to have the withdrawal posted in the corresponding ledger and to bring the withdrawal memo back to him so he and the branch manager, Edgardo Panlilio, could affix their signatures.

Meanwhile, Frias checked the account ledger and found a "hold jacket" indicating that no withdrawal from the said account should be allowed to reduce its balance below $35,000.00. From the account ledger, Frias also discovered that a deposit of $10,000.00 was made on January 2, 1996. He found the deposit memo on file. Thereafter, Frias compared the signature on the withdrawal memo with the

specimen signatures of the depositors in their signature card. Finding a "big difference" in the signatures, he referred the matter to the branch manager, Edgardo Panlilo. The appellant reiterated that the withdrawal was made after the cut-off time on December 29, 1995. Doubting her explanation, Frias conducted another cash count.

At that time, appellant's accountability based on the books of the bank was $21,778.86, but the money in her cash box was only $11,778.86, thus, short of US$10,000.00. When Panlilio again asked appellant to explain, the latter started to cry and said she would explain to the bank president. Appellant told Panlilio that she gave the $10,000.00 to a person on December 29, 1995 because her family was being threatened. In her letter to the bank president dated January 4, 1996, appellant apologized and explained her shortage of $10,000.00 and another shortage of P2.2 Million which the audit team had also discovered.

Upon the State resting its case against the accused, her counsel filed a Demurrer to Evidence and Motion to Defer Defense Evidence, praying for the dismissal of the charge on the ground that the evidence of the State did not suffice to establish her guilt beyond reasonable doubt. However, the RTC denied the Demurrer to Evidence and Motion to Defer Defense Evidence and deemed the case submitted for decision on the basis that her filing her demurrer to evidence without express leave of court as required by Section 15, Rule 119, of the Rules of Court had waived her right to present evidence. The RTC rendered its decision finding and pronouncing the accused guilty of qualified theft. The CA affirmed her conviction.

ISSUE:

(a) Whether the information filed against the accused was fatally defective;
(b) Whether the RTC correctly found that the accused had waived her right to present evidence in her defense; and
(c) Whether the extrajudicial admission of taking the amount involved contained in the letter of the accused to the President of Prudential Bank was admissible under the rules and jurisprudence.

RULING:

(a) The Information was sufficient and valid.

The petitioner submits that the information charged her with qualified theft that allegedly transpired on December 29, 1995, but the evidence at trial could not be the basis of her conviction because it actually proved that the taking had transpired on January 2, 1996; and that the discrepancy would unduly prejudice her rights as an accused to be informed of the charges as to enable her to prepare for her defense. As to the sufficiency of the allegation of the time or date of the commission of the offense, Section 6 and Section 11, Rule 110 of the Revised Rules of Court provide:

Section 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place wherein the offense was committed.

Section 11. Time of the commission of the offense. - It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material

ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit.

Conformably with these rules, the information was sufficient because it stated the approximate time of the commission of the offense through the words "on or about the 2nd of January, 1996," and the accused could reasonably deduce the nature of the criminal act with which she was charged from a reading of its contents as well as gather by such reading whatever she needed to know about the charge to enable her to prepare her defense.

(b) CA and RTC did not err in deeming petitioner to have waived her right to present evidence.

Section 15, Rule 119 of the Rules of Criminal Procedure provides:

Sec. 15. Demurrer to Evidence. - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.
If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. Under the rule, the RTC properly declared the accused to have waived her right to present evidence because she did not obtain the express leave of court for her demurrer to evidence, thereby reflecting her voluntary and knowing waiver of her right to present evidence. The RTC did not need to inquire into the voluntariness and intelligence of the waiver, for her opting to file her demurrer to evidence without first obtaining express leave of court effectively waived her right to present her evidence.

It is true that the Court has frequently deemed the failure of the trial courts to conduct an inquiry into the voluntariness and intelligence of the waiver to be a sufficient cause to remand cases to the trial courts for the purpose of ascertaining whether the accused truly intended to waive their constitutional right to be heard, and whether they understood the consequences of their waivers. In this case, the RTC deemed the herein accused to have waived her right to present evidence. The accused and her counsel should not have ignored the potentially prejudicial consequence of the filing of a demurrer to evidence without the leave of court required in Section 15, Rule 119, of the Revised Rules of Court. They were well aware of the risk of a denial of the demurrer being high, for by demurring the accused impliedly admitted the facts adduced by the State and the proper inferences therefrom.

(c) Petitioner's handwritten letter is admissible in evidence.

The accused submits that the letter was inadmissible for being in reality an uncounseled extrajudicial confession, and for not being executed under oath. The letter was not an extrajudicial confession whose validity depended on its being executed with the assistance of counsel and its being under oath, but a voluntary party admission under Section 26, Rule 130 of the Rules of Court that was admissible against her. An admission, if voluntary, is admissible against the admitter for the reason that it is fair to presume that the admission corresponds with the truth, and it is the admitter's fault if the admission does not. By virtue of its being made by the party himself, an admission is competent primary evidence against the admitter.

Under Section 30, Rule 130 of the Rules of Court, a confession is a declaration of an accused acknowledging guilt for the offense charged, or for any offense necessarily included therein.

Nonetheless, there was no need for a counsel to have assisted the accused when she wrote the letter because she spontaneously made it while not under custodial investigation. Her insistence on the assistance of a counsel might be valid and better appreciated had she made the letter while under arrest, or during custodial investigation, or under coercion by the investigating authorities of the Government.

FELICISIMO F. LAZARTE, JR., *Petitioner*, - versus - SANDIGANBAYAN (First Division) and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. NO. 180122, EN BANC, March 13, 2009, TINGA, *J.*

When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. But when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar, there is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged. The conspiracy is significant only because it changes the criminal liability of all the accused in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime.

FACTS:

In June 1990, the National Housing Authority awarded the original contract for the infrastructure works on the Pahanocoy Sites and Services Project, Phase 1 in Bacolod City to A.C. Cruz Construction. The project, with a contract cost of P7,666,507.55, was funded by the World Bank under the Project Loan Agreement forged on 10 June 1983 between the Philippine Government and the IBRD-World Bank.

In April 1991, the complainant Fajutag, Jr. was designated Project Engineer of the project. A Variation/Extra Work Order No. 1 was approved for the excavation of unsuitable materials and road filling works. As a consequence, Arceo Cruz of A.C. Cruz Construction submitted the fourth billing and Report of Physical Accomplishments. Fajutag, Jr., however, discovered certain deficiencies. As a result, he issued Work Instruction No. 1 requiring some supporting documents. The contractor failed to comply with the work instruction. Upon Fajutag, Jr.'s further verification, it was established that there was no actual excavation and road filling works undertaken by A.C. Cruz Construction.

The Project Office recommended the termination of the infrastructure contract with A.C. Construction. The Inventory and Acceptance Committee determined the total accomplishment of the contractor representing P3,433,713.10 out of the total revised contract amount of P8,397,225.09. The said Committee recommended that the temporary project suspension. The NHA General Manager through a letter dated 29 August 1991 informed the contractor of the rescission of his contract for the development of the said project upon his receipt thereof without prejudice to NHA's enforcing its right under the contract in view of the contractor's unilateral and unauthorized suspension of the contract works amounting to abandonment of the project. Despite the rescission notice, the contractor continued working intermittently with very minimal workforce until such time as the award of remaining infrastructure works is effected by NHA to another contractor.

The NHA Board of Directors awarded the remaining work to Triad Construction and Development Corporation. The contract amount for the remaining work was P9,554,837.32. Thereafter, Triad discovered that certain work items that had been in under the inventory report as accomplished and acceptable were in fact non-existent. Fajutag, Jr. brought these irregularities to the attention of the Commission on Audit. COA uncovered some anomalies, among which, are ghost activities, specifically

the excavation of unsuitable materials and road filling works and substandard, defective workmanship. Consequently, petitioner, as manager of the Regional Projects Department and Chairman of the Inventory and Acceptance Committee, and other NHA officials were charged in an Information. Petitioner filed a motion to quash the Information raising the following grounds: (1) the facts charged in the information do not constitute an offense; (2) the information does not conform substantially to the prescribed form; (3) the constitutional rights of the accused to be informed of the nature and cause of the accusations against them have been violated by the inadequacy of the information; and (4) the prosecution failed to determine the individual participation of all the accused in the information.

Sandiganbayan denied the Motion. Hence, the instant petition which is a reiteration of petitioner's submissions. In addition, petitioner avers that his constitutional right to be informed of the nature and cause of the accusation against him had been violated for failure of the Information to specify his participation in the commission of the offense. Petitioner also argues that the facts charged in the Information do not constitute an offense as no damage or injury had been made or caused to any party or to the government. Finally, petitioner maintains that the Sandiganbayan lost its jurisdiction over him upon the dismissal of the charges against his co-accused as the remaining accused are public officers whose salary grade is below 27.

ISSUE:

Whether the Information filed before the Sandiganbayan insufficiently averred the essential elements of the crime charged as it failed to specify the individual participation of all the accused.

RULING:

The Court is not persuaded. The Court affirms the resolutions of the Sandiganbayan.

At the outset, it should be stressed that the denial of a motion to quash is not correctible by certiorari. Well-established is the rule that when a motion to quash in a criminal case is denied, the remedy is not a petition for certiorari but for petitioners to go to trial without prejudice to reiterating the special defenses invoked in their motion to quash. Remedial measures as regards interlocutory orders, such as a motion to quash, are frowned upon and often dismissed. The evident reason for this rule is to avoid multiplicity of appeals in a single court. This general rule, however, is subject to certain exception, that is: in denying the motion to dismiss or motion to quash, the court acts without or in excess of jurisdiction or with grave abuse of discretion.

Section 6 of Rule 110 of the Rules of Court states that:

SEC. 6. Sufficiency of complaint or information.--A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the elements of the crime charged.

The test is whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The raison d'etre of the rule is to enable the accused to suitably prepare his defense.

The Court finds that the Information in this case alleges the essential elements of violation of Section 3(e) of R.A. No. 3019.

On the contention that the Information did not detail the individual participation of the accused in the allegation of conspiracy in the Information, the Court underscores the fact that under Philippine law, conspiracy should be understood on two levels. Conspiracy can be a mode of committing a crime or it may be constitutive of the crime itself. Generally, conspiracy is not a crime in this jurisdiction. It is punished as a crime only when the law fixes a penalty for its commission such as in conspiracy to commit treason, rebellion and sedition.

When conspiracy is charged as a crime, the act of conspiring and all the elements of said crime must be set forth in the complaint or information. But when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar, there is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged. The conspiracy is significant only because it changes the criminal liability of all the accused in the conspiracy and makes them answerable as co-principals regardless of the degree of their participation in the crime.

In addition, the allegation of conspiracy in the Information should not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it. A statement of the evidence on the conspiracy is not necessary in the Information.

As to the contention that the residual averments in the Information have been rendered unintelligible by the dismissal of the charges against some of his co-accused, the Court finds that the Information sufficiently makes out a case against petitioner and the remaining accused.

Finally, the Court sustains the Sandiganbayan's jurisdiction to hear the case. As correctly pointed out by the Sandiganbayan, it is of no moment that petitioner does not occupy a position with Salary Grade 27 as he was a department manager of the NHA, a government-owned or controlled corporation, at the time of the commission of the offense, which position falls within the ambit of its jurisdiction.

JOHN LABSKY P. MAXIMO AND ROBERT M. PANGANIBAN, *Petitioners*, - versus - FRANCISCO Z. VILLAPANDO, JR., *Respondents*.
G.R. No. 214925, SECOND DIVISION, April 26, 2017, PERALTA, *J.*

FRANCISCO Z. VILLAPANDO, JR., *Petitioners*, - *versus* - MAKATI CITY PROSECUTION OFFICE, JOHN LABSKY P. MAXIMO AND ROBERT M. PANGANIBAN, *Respondents*.
G.R. No. 214965, SECOND DIVISION, April 26, 2017, PERALTA, *J.*

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy. An Information, when required by law to be filed by a public prosecuting

officer, cannot be filed by another. The court does not acquire jurisdiction over the case because there is a defect in the Information. There is no point in proceeding under a defective Information that could never be the basis of a valid conviction. In the case at bar, if indeed there was no proof of valid delegation of authority as found by the CA, the Court is constrained not to accord the presumption of regularity in the performance of official functions in the filing of the Amended Information.

FACTS:

Petitioner Villapando filed before the Office of the City Prosecutor of Makati City, a complaint against respondents Maximo and Panganiban and other directors/officers of ASB Realty Corp. (ASB) for Violation Subdivision and Condominium Buyers Protective Decree. The said criminal complaint was dismissed by the OCP-Makati in its Resolution.

Maximo instituted a Complaint for Perjury, Incriminating Innocent Person and Unjust Vexation against Villapando. The complaint was assigned to Assistant City Prosecutor Evangeline Viudez-Canobas. ACP Canobas issued a Resolution 19 on August 3, 2011 finding probable cause against Villapando for the crime of perjury but dismissed the complaints for unjust vexation and incriminating innocent person. The Resolution was approved by Senior Assistant City Prosecutor (SACP) Christopher Garvida. OCP-Makati issued an Order denying Villapando's Motion for Partial Reconsideration of the Canobas Resolution.

Panganiban also filed a Complaint for Perjury and Unjust Vexation against Villapando. The complaint was assigned to ACP Benjamin S. Vermug, Jr. ACP Vermug, Jr. issued a Resolution finding probable cause against Villapando for the crime of perjury but dismissed the complaint for unjust vexation. The Resolution was approved by Senior Assistant City Prosecutor Garvida who recommended for the filing of an Amended Information before the METC to include Panganiban as one of the complainants. OCP-Makati issued an Order denying Villapando's Motion for Partial Reconsideration of the Vermug Resolution.

Aggrieved, Villapando filed separate petitions for review of the Canobas Resolution and the Vermug Resolution dated March 31, 2012 and May 7, 2012, respectively, before the DOJ. DOJ denied the petition. Villapando elevated the case to the RTC of Makati City which denied the petition. He raised before the CA that the Information was filed without the prior written authority of the City Prosecutor Feliciano Aspi of Makati which is contrary to Section 4 of Rule 112 of the Rules of Court. The CA dismissed the case reversing the RTC's decision.

Maximo and Panganiban filed a petition for review on certiorari. Maximo and Panganiban argued in their petition that the CA erred in holding that the Information did not comply with the rule requiring prior written authority or approval of the City or Provincial Prosecutor. They pointed out that the Information bears the certification that the filing of the same had the prior authority or approval of the City Prosecutor who is the officer authorized to file information in court. According to them, there is a presumption that prior written authority or approval of the City Prosecutor was obtained in the filing of the Information, such that, the non-presentation of Office Order No. 32, which was the alleged basis of the authority in filing the Information, is immaterial.

ISSUE:

Whether or not the Amended Information is valid?

HELD:

No. Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that the filing of a **complaint or information requires a prior written authority or approval of the named officers therein before a complaint or information filed before the courts**, viz.:

Section 4. Resolution of investigating prosecutor and its review. - If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was to given an opportunity submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to th provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Thus, as a general rule, complaints or informations filed before the courts without the prior written authority or approval of the foregoing authorized officers render the same defective and, therefore, subject to quashal pursuant to Section 3 (d), Rule 117 of the same Rules. The Court cited the cases of People v. Garfin and Tolentino v. Paqueo wherein the Court had already rejected similarly-worded certifications uniformly holding that, despite such certifications, the Informations were defective as it was shown that the officers filing the same in court either lacked the authority to do so or failed to show that they obtained prior written authority from any of those authorized officers enumerated in Section 4, Rule 112 of the 2000 Revised Rules of Criminal Procedure.

In the case at bar, if indeed there was no proof of valid delegation of authority as found by the CA, the Court is constrained not to accord the presumption of regularity in the performance of official functions in the filing of the Amended Information. The Court find untenable the argument of Maximo and Panganiban that the issuance of the Order dated February 21, 2012, bearing the signature of the City Prosecutor, denying Villapando's Partial Motion for Reconsideration, in effect, affirmed the validity of the Information filed.

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus - ROMAR TEODORO y VALLEJO, *Accused-Appellant*.
G.R. NO. 172372, SECOND DIVISION, December 4, 2009, BRION, *J.*

Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed, except when the date of commission is a material element of the offense. In the present case, the Information in Criminal Case No. 8539 states that the offense was committed "in the first week of July 1995"; it likewise alleged that the victim was "below 12 years old"

at the time of the incident. These allegations sufficiently informed the appellant that he was being charged of rape of a child who was below 12 years of age.

FACTS:

The prosecution charged the appellant before the RTC of the crime of rape under three separate Informations. The appellant pleaded not guilty to the charges laid. The prosecution presented the following witnesses in the trial on the merits that followed: Dr. Mendoza; Donna; and AAA. The appellant took the witness stand for the defense.
Dr. Mendoza, the Municipal Health Officer of San Pascual, Batangas, testified that she conducted a medical examination of AAA. Dr. Mendoza stated that she conducted a physical examination of AAA at the request of the police, and that the healed laceration on AAA's private part was the result of previous sexual intercourse. Donna, a medical technologist at the Bauan Pathology Center, testified that Dr. Mendoza requested her to conduct a laboratory examination on the vaginal smear taken from AAA. She found the vaginal smear positive for the presence of sperm cells.

AAA declared on the witness stand that she was born on July 21, 1983. AA recalled that on June 18, 1995, while her parents were at the sugarcane plantation, the appellant went to the bathroom and kissed her on the face and neck. The appellant then removed her clothes, pants and panty. Thereafter, the appellant took off his pants and inserted his penis into her vagina. AAA struggled and pushed the appellant; the latter threatened to kill AAA if she told her parents about the incident. Afterwards, the appellant left. AAA likewise recalled that during the first week of July 1995, the appellant again "raped" her in the bathroom. AAA further testified that at around 10:00 p.m. of March 30, 1996, while her parents were asleep, the appellant dragged her to the bathroom and raped her.

The appellant presented a different version of the events and claimed that AAA had been his sweetheart since June 22, 1996. He denied using force on AAA and claimed that the sexual intercourse between them on March 30, 1996 was consensual. The RTC convicted the appellant of two counts of statutory rape in its decision of February 19, 2001.

The records of this case were originally transmitted to this Court on appeal. Pursuant to the SC's ruling in *People v. Mateo*, the SC endorsed the case and the records to the CA for appropriate action and disposition. The CA, in its decision dated January 19, 2006, affirmed the RTC decision in toto.

The CA dismissed the appellant's argument that the Information in Criminal Case No. 8539 was vague and insufficient because the exact date of the crime was not stated. The CA reasoned out that Section 6, Rule 110 of the Rules on Criminal Procedure merely requires that the Information contain the approximate time, and not the exact time, of the commission of the offense. In his brief, the appellant argued that the lower courts erred in convicting him of two counts of statutory rape despite the prosecution's failure to prove his guilt beyond reasonable doubt. He claimed that the victim's testimony was full of inconsistencies. He likewise contended that the Information in Criminal Case No. 8539 was defective for failure to state the exact date of the commission of the crime.

ISSUE:

Whether or not the CA erred in affirming the conviction of the accused. (No)

RULING:

Sufficiency of Prosecution Evidence

Rape is defined and penalized under Article 335 of the Revised Penal Code. Rape under paragraph 3 of said article is termed statutory rape as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman below twelve years old. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.

AAA, while recounting her unfortunate ordeal, positively identified the appellant as the perpetrator of the June 18, 1995 rape; she never wavered in this identification. AAA likewise positively identified the appellant as the one who raped her during the first week of July 1995. Her testimony dated November 6, 1997 was clear and straightforward; she was consistent in her recollection of her defloration. The SC views this testimony to be clear, convincing and credible considering especially the corroboration it received from the medico-legal report and testimony of Dr. Mendoza. The additionally do not see from the records any indication that AAA's testimony should be seen in a suspicious light.

The prosecution positively established the elements of rape required under Article 335. First, the appellant succeeded in having carnal knowledge with the victim on June 18, 1995 and during the first week of July 1995. AAA was steadfast in her assertion that the appellant raped her on both occasions; and that the appellant succeeded in inserting his penis into her private part, as a result of which she felt pain. Second, the prosecution established AAA's minority during the trial through the presentation of her birth certificate showing that she was born on July 21, 1983. AAA herself, in fact, testified regarding her age. Hence, when the appellant raped AAA on June 18, 1995 and on the first week of July 1995, she was not yet 12 years old.

As stated above, when the victim is below 12 years of age, violence or intimidation is not an element to be considered; the only subject of inquiry is whether carnal knowledge took place. The law conclusively presumes the absence of consent when the victim is below the age of 12.

The appellant further argues that the Information in Criminal Case No. 8539 is defective because it failed to state the exact date of the commission of the crime. The contention lacks merit.

An information, under Section 6, Rule 110 of the 2000 Revised Rules on Criminal Procedure, is deemed sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; **the approximate date of the commission of the offense**; and the place where the offense was committed.

Section 11 of the same Rule also provides that it is not necessary to state in the complaint or information the precise date the offense was committed, except when the date of commission is a material element of the offense. The offense may thus be alleged to have been committed on a date as near as possible to the actual date of its commission. At the minimum, an indictment must contain all the essential elements of the offense charged to enable the accused to properly meet the charge and duly prepare for his defense

In the present case, the Information in Criminal Case No. 8539 states that the offense was committed "in the first week of July 1995"; it likewise alleged that the victim was "below 12 years old" at the time of the incident. These allegations sufficiently informed the appellant that he was being charged of rape of a child who was below 12 years of age. Afforded adequate opportunity to prepare his defense, he cannot now complain that he was deprived of his right to be informed of the nature of the accusation against him. The court has repeatedly held that the date of the commission of rape is not an essential element of the crime. Moreover, objections relating to the form of the complaint or information cannot be made for the first time on appeal.

PEOPLE OF THE PHILIPPINES, ***Appellee,*** **v. RAEL DELFIN**, ***Appellant.***
G.R. No. 201572, SECOND DIVISION, July 09, 2014, PEREZ, *J.*

It is not necessary to state in the complaint or information ***the precise date the offense was committed except when it is a material ingredient of the offense.*** *The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.The foregoing rule, however, is concededly not absolute. Variance in the date of commission of the offense as alleged in the information and as established in evidence becomes fatal when such discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense. In this case, despite the disparity as to the date of the alleged murder, the court believes that there is no mistaking that both the information and the evidence of the prosecution but pertain to one and the same offense.*

FACTS:

On the night of 27 September 2000, one Emilio Enriquez, a 51-year-old fisherman from Navotas City was killed after being gunned down at a store just across his home. Suspected of killing Emilio was the appellant. On 13 March 2001, the appellant was formally charged with the murder of Emilio before the RTC of Malabon. When arraigned, appellant entered a plea of not guilty. Trial thereafter ensued. During trial, the prosecution presented the testimonies of one Joan Cruz and a certain Dr. Jose Arnel Marquez. Joan is an eyewitness to the gunning of Emilio. She is also the live-in partner of the victim. Dr. Marquez, on the other hand, is a Philippine National Police physician who examined post mortem the corpse of Emilio. He issued Medico-Legal Report, which revealed that Emilio died as a consequence of two (2) gunshot wound.

Appellant offered the alibi that he was fishing on the seas of Bataan on the date and time of the supposed shooting. According to the appellant, he left for the seas at about 3:00 p.m. of 27 September 2000 and only returned at around 4:00 a.m. of the next day. Appellant also testified that he was accompanied on this fishing trip by three other individuals one of which was Rene.

Rene initially corroborated on all points the testimony of appellant. However, Rene later admitted that he, the appellant and their other companions actually left for their fishing trip at 3:00 p.m. of 26 September 2000 not the 27th; and returned to shore at 4:00 p.m. of 27 September 2000 not the 28th. Thus, at the date and time of the supposed shooting, Rene and the appellant were already in Navotas City. The RTC rendered a Decision finding appellant guilty beyond reasonable doubt of the offense of murder.

CA rendered a Decision affirming the conviction of the appellant. In this appeal, appellant assails the validity of the information under which he was tried and convicted. He specifically points out to the discrepancy between the date of the commission of the murder as alleged in the information i.e., "on

or about the 27th day of November 2000" and the one actually established during the trial i.e., 27 September 2000. Appellant protests that the failure of the information to accurately allege the date of the commission of the murder violated his right to be properly informed of the charge against him and consequently impaired his ability to prepare an intelligent defense thereon.

ISSUE:

Whether or not the variance in the date of the commission of the murder as alleged in the information and as established during the trial invalidates the information.

RULING:

The SC sustains the validity of the information under which the appellant was tried, and convicted, notwithstanding the variance in the date of the commission of the crime as alleged in the information and as established during the trial.
In crimes where the date of commission is not a material element, like murder, it is not necessary to allege such date with absolute specificity or certainty in the information. The Rules of Court merely requires, for the sake of properly informing an accused, that the date of commission be approximated:

Sec. 6. Sufficiency of complaint or information. A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

Sec. 11. Date of commission of the offense. - It is not necessary to state in the complaint or information **the precise date the offense was committed except when it is a material ingredient of the offense.** The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.

The foregoing rule, however, is concededly not absolute. Variance in the date of commission of the offense as alleged in the information and as established in evidence becomes fatal when such discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense. In this event, the defective allegation in the information is not deemed supplanted by the evidence nor can it be amended but must be struck down for being violative of the right of the accused to be informed of the specific charge against him. In the case of *Opemia*, an information for theft of large cattle committed on 18 June 1952 was filed against four accused. After all of the accused entered a plea of not guilty and during trial, the prosecution adduced evidence to the effect that the purported theft was committed in July of 1947. The prosecution thereafter moved for the amendment of the information to make it conform to the evidence with respect to the date of theft. The trial court rejected the motion and instead dismissed the information altogether. The period of almost five years between 1947 and 1952 covers such a long stretch of time that one cannot help but be led to believe that another theft different from that committed by the Defendants in 1952 was also perpetrated by them in 1947.

In this case, however, the court finds applicable, not the exception in Opemia, but the general rule.

Despite their disparity as to the date of the alleged murder, the court believes that there is no mistaking that both the information and the evidence of the prosecution but pertain to one and the same offense i.e., the murder of Emilio. What clearly appears to this Court, on the other hand, is that the inaccurate allegation in the information is simply the product of a mere clerical error. This is obvious from the fact that, while all its supporting documents point to the murder as having been committed on the 27th of September 2000, the information's mistake is limited only to the month when the crime was committed. Such an error is evidently not fatal; it is deemed supplanted by the evidence presented by the prosecution.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus - ADELADO ANGUAC y RAGADAO, *Accused-Appellant*.
G.R. NO. 176744, SECOND DIVISION, June 5, 2009, VELASCO, *J.*

the character of the crime is determined neither by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the recital of the ultimate facts and circumstances in the information. Consequently, even if the designation of the crime in the information of Criminal Case No. RTC 2757-I was defective, what is controlling is the allegation of the facts in the information that comprises a crime and adequately describes the nature and cause of the accusation against the accused. In this case, the informations charged accused-appellant with having sexual congress with AAA through force, threats, and intimidation. These allegations more properly fall under a charge under Sec. 5(b) which relates to offenders who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse, instead of the one originally charged.

FACTS:

Accused-appellant Anguac is the common-law spouse of BBB, the mother of AAA. At around 9:00 p.m. of March 28, 1998, AAA, then 17 years old, while asleep with her siblings in a room at their residence, found herself suddenly awakened by Anguac who poked a knife at her with the threat, "*Huwag kang maingay kundi papatayin ko kayong lahat."* Thereafter, Anguac succeeded in removing the underwear of the struggling AAA and then sexually forced himself on AAA while pointing the knife just below her ear.The sexual assault on AAA was to be repeated five more times: in April 1998,May 1998, twice in January 1999, and once in February 1999.

Sometime in July 1999, AAA, when queried by her aunts, admitted to her being pregnant as a result of the dastardly acts of Anguac. Thereafter, the concerned aunts accompanied their pregnant niece to the police to file a complaint against Anguac. On October 4, 1999, AAA gave birth to a baby boyOn November 26, 1999, two separate informations were filed charging Anguac with rape and violation of RA 7610. When arraigned, Anguac pleaded not guilty to both charges. In the ensuing trial, he denied committing the crimes imputed to him, claiming that AAA was away staying and working with her aunt during the months the alleged molestation took place. He described AAA to be a problem child, often cutting classes, and was always in the company of boys. BBB, AAA's mother, corroborated his testimony about AAA being away with her aunt from March 22, 1998 to March 1999. She also testified that Anguac treated AAA like his very own daughter.

The RTC rendered a Decision finding Anguac guilty as charged. Anguac appealed to the SC, claiming that the RTC erred in: (1) giving undue credence to the testimonies of the prosecution's witness; (2) finding the charges sufficiently established by evidence; and (3) finding him guilty beyond reasonable doubt of the crimes charged. In line with its ruling in *People v. Mateo*, transferred the case to the CA for its disposition. The CA affirmed the Decision of the RTC. It, however, treated the crime of rape as a violation of Sec. 5(b) of RA 7610 instead of Sec. 5(a) as found by the trial court, pursuant to the dictum "the real nature of the crime charged is determined by the facts alleged in the Information and not by the title or designation of the offense contained in the caption of the Information." The case is now again with this Court for review of the CA's affirmatory decision.

ISSUE:

(a) Whether or not the Appeal of Anguac has merit.

(b) Whether the CA erred in treating the crime of rape as a violation of Sec. 5(b) of RA 7610 instead of Sec. 5(a) as found by the trial court.

RULING:

The appeal of Anguac has no merit.

Anguac's allegation that AAA resented being made to work off her mother's debts has nothing to support itself. The appellate court found no sufficient basis to back Anguac's contention about AAA being asked to work to pay off her mother's obligation as a result of which she harbored a grudge against him and her mother. Moreover, the resentment angle, even if true, does not prove any ill motive on AAA's part to falsely accuse Anguac of rape or necessarily detract from her credibility as witness.

Both the trial and appellate courts found AAA to be categorical and unfaltering in her testimony on those unforgettable occasions. Both courts' assessments of AAA's credibility, particularly those of the trial court which had the advantage of observing her demeanor while in the witness box, carry great weight. Unless it is shown that the trial court overlooked, misapplied, or misunderstood some fact or circumstance of substance that would otherwise affect the result of the case, its findings will remain undisturbed on appeal.

Anguac's claim that it is impossible for AAA's young siblings sleeping beside or near her not to be awakened while she was allegedly being rape is untenable. Lust, being a very powerful human urge, is, to borrow from People v. Bernabe, "no respecter of time and place." Rape can be committed in even the unlikeliest places and circumstances, and, as recent jurisprudence shows, by the most unlikely persons. Anguac has failed to disprove the allegations of AAA with his mere denial of the charges against him. The rule is that denials are self-serving negative evidence which cannot prevail over the positive, straightforward, and unequivocal testimony of the victim. The SC have ruled time and again that the sole testimony of a rape victim, if credible, suffices to convict.

The Court affirms the CA's modification of the crime charged. The RTC erroneously convicted accused-appellant based on the crime designated in the information for that criminal case. While the Information pertaining to that criminal case charged accused-appellant with violation of Sec. 5(a) of RA 7610, the facts alleged in it constitute elements of a violation of Sec. 5(b) of the same law. As the Court has previously held, the character of the crime is determined neither by the caption or

preamble of the information nor by the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the recital of the ultimate facts and circumstances in the information. Consequently, even if the designation of the crime in the information of Criminal Case No. RTC 2757-I was defective, what is controlling is the allegation of the facts in the information that comprises a crime and adequately describes the nature and cause of the accusation against the accused.

Sec. 5(a) of RA 7610 refers to engaging in or promoting, facilitating, or inducing child prostitution. Sec. 5(b), on the other hand, relates to offenders who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse. The informations charged accused-appellant with having sexual congress with AAA through force, threats, and intimidation. These allegations more properly fall under a charge under Sec. 5(b). The appellate court was, thus, correct in modifying the RTC's disposition of the case.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus - LEO QUEMEGGEN and JANITO DE LUNA, *Accused-Appellants*.
G.R. NO. 178205, THIRD DIVISION, July 27, 2009, NACHURA, *J.*

Indeed, the killing may occur before, during, or after the robbery. However, essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time. In this case, from the testimonies of the prosecution witnesses, the SC cannot see the connection between the robbery and the homicide. There may be a connection between the two crimes, but surely, there was no "direct connection."

FACTS:

On October 31, 1996, at around 11:00 in the evening, Noel Tabernilla was driving his passenger jeep. Along Road 10 in Navotas, four of the passengers announced a hold-up. One of the robbers poked a balisong on Tabernilla's nape, while the other three divested the passengers of their valuables. From there, Tabernilla and six or seven of his passengers went to the nearest police detachment to report the incident. Three policemen accompanied them to the scene of the crime. While there, the policemen chanced upon the robbers riding a pedicab. Socrates Kagalingan, one of the passengers-victims, recognized the perpetrators, since one of them was still wearing the belt bag that was taken from him.

The policemen were able to arrest three suspects including Janito de Luna, but Leo Quemeggen was able to escape. The three suspects were left under the care of a police officer, Emelito Suing, while the other police officers pursued Quemeggen. Taking advantage of the situation, the three suspects ganged up on Suing; de Luna held his hand, while the other suspect known as "Weng-Weng" shot him on the head. Suing was brought to the hospital where he eventually died.

Appellants Quemeggen and de Luna were eventually arrested through follow-up operations undertaken by the Navotas Police. On November 5, 1996, appellants were charged in an Information for Robbery with Homicide. Upon arraignment, appellants pleaded "Not Guilty." As the appellants manifested that they were not availing of the pre-trial conference, trial on the merits ensued. Appellants, on the other hand, interposed the defense of alibi. They maintained that they were elsewhere when the robbery and shooting incident took place. They claimed that they were in their respective houses. The RTC rendered a Decision convicting the appellants of Robbery with Homicide.

The case was elevated to this Court for automatic review, but pursuant to the decision in *People v. Mateo*, the case was transferred to the CA. CA modified the RTC Decision by convicting Quemeggen of Robbery, and de Luna of the separate crimes of Robbery and Homicide. The CA concluded that appellants could not be convicted of the special complex crime of Robbery with Homicide. It noted that Suing was not killed by reason or on the occasion of the robbery. Hence, two separate crimes of robbery and homicide were committed. As the appellants were in conspiracy to commit robbery, both were convicted of such offense. However, as to the death of Suing, considering that at the time of the killing, Quemeggen was being chased by the police officers and there was no evidence showing that there was conspiracy, only de Luna was convicted of homicide.

ISSUE:

Whether or not the CA erred in convicting Quemeggen of robbery and de Luna of the separate crimes of Robbery and Homice despite being charged with Robbery with Homicide.

RULING:

The Information shows that appellants were charged with Robbery with Homicide under Article 294 of the Revised Penal Code. For the accused to be convicted of the said crime, the prosecution is burdened to prove the confluence of the following elements:

a. The taking of personal property is committed with violence or intimidation against persons;
b. The property taken belongs to another;
c. The taking is animo lucrandi; and
d. By reason of the robbery or on the occasion thereof, homicide is committed

The only question is whether the fourth element was present, i.e., that by reason or on the occasion of the robbery, homicide was committed.

Homicide is said to have been committed by reason or on the occasion of robbery if it is committed a) to facilitate the robbery or the escape of the culprit; b) to preserve the possession by the culprit of the loot; c) to prevent discovery of the commission of the robbery; or d) to eliminate witnesses to the commission of the crime. Given the circumstances surrounding the instant case, the court agrees with the CA that appellants cannot be convicted of Robbery with Homicide.

Indeed, the killing may occur before, during, or after the robbery. However, essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time. From the testimonies of the prosecution witnesses, the SC cannot see the connection between the robbery and the homicide.

It must be recalled that after taking the passengers' personal belongings, appellants (and two other suspects) alighted from the jeepney. At that moment, robbery was consummated. De Luna and two other suspects were caught and left under the care of Suing. It was then that Suing was killed. Clearly, the killing was distinct from the robbery. There may be a connection between the two crimes, but surely, there was no "direct connection." Though appellants were charged with Robbery with Homicide, the SC finds Quemeggen guilty of robbery, and de Luna of two separate crimes of robbery and homicide. It is axiomatic that the nature and character of the crime charged are determined not by the designation of the specific crime, but by the facts alleged in the information. As worded, the

Information sufficiently alleged all the elements of both felonies. Needless to state, appellants failed, before their arraignment, to move for the quashal of the Information, which appeared to charge more than one offense. They have thereby waived any objection thereto, and may thus be found guilty of as many offenses as those charged in the Information and proven during the trial.

SHEALA P. MATRIDO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 179061, SECOND DIVISION, July 13, 2009, CARPIO MORALES, J.

As early as the 1904 case of U.S. v. Karelsen, the rationale of this fundamental right of the accused was already explained in this wise:

> *The object of this written accusation was – First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged.*
>
> *It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.*

FACTS:

As a credit and collection assistant of private complainant Empire East Land Holdings, Inc., petitioner was tasked to collect payments from buyers of real estate properties such as Laguna Bel-Air developed by private complainant, issue receipts therefor, and remit the payments to private complainant in Makati City.

On June 10, 1999, petitioner received amortization payment from one Amante dela Torre in the amount of ₱22,470.66 as evidenced by the owner's copy of Official Receipt No. 36547, but petitioner remitted only ₱4,470.66 to private complainant as reflected in the treasury department's copy of Official Receipt No. 36547 submitted to private complainant, both copies of which bear the signature of petitioner and reflect a difference of ₱18,000.

On private complainant's investigation, petitioner was found to have failed to remit payments received from its clients, prompting it to file various complaints, one of which is a Complaint-Affidavit of September 21, 2000 for estafa, docketed as I.S. No. 2000-I-32381 in the Makati Prosecutor's Office.

In the meantime or in October 2000, petitioner paid private complainant the total amount of ₱162,000, drawing private complainant to desist from pursuing some related complaints. A few other cases including I.S. No. 2000-I-32381 pushed through, however, since the amount did not sufficiently cover petitioner's admitted liability of ₱400,000.

By Resolution of November 15, 2000, the City Prosecution Office of Makati dismissed the Complaint for estafa for insufficiency of evidence but found probable cause to indict petitioner for qualified theft.

On arraignment, petitioner entered a plea of "not guilty." After trial, Branch 56 of the RTC of Makati, by Decision of December 13, 2004 which was promulgated on April 28, 2005, convicted petitioner of qualified theft. The said decision was affirmed by the appellate court, hence, this petition.

ISSUE:

Whether the appellate court "gravely erred in affirming the decision of the trial court convicting the petitioner of the crime of qualified theft despite the fact that the prosecution tried to prove during the trial the crime of estafa thus denying the petitioner the right to be informed of the nature and cause of accusation against her." (NO)

RULING:

In *Andaya v. People*, the Court expounded on the constitutional right to be informed of the nature and cause of the accusation against the accused.

x x x As early as the 1904 case of *U.S. v. Karelsen*, the rationale of this fundamental right of the accused was already explained in this wise:

> The object of this written accusation was – First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged.
>
> It is fundamental that every element constituting the offense must be alleged in the information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and an accused's right to question his conviction based on facts not alleged in the information cannot be waived. No matter how conclusive and convincing the evidence of guilt may be, an accused

> cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights.

Gauging such standard against the wording of the Information in this case, the Court finds no violation of petitioner's rights.

MICHAEL JOHN Z. MALTO*, Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 1647333, FIRST DIVISION, September 21, 2007, CORONA, J.

The designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. However, the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged. What controls is not the title of the information or the designation of the offense but the actual facts recited in the information. In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the information.

FACTS:

Sometime during the month of November 1997 to 1998, Malto seduced his student, AAA, a minor, to indulge in sexual intercourse several times with him. Prior to the incident, petitioner and AAA had a "*mutual understanding*" and became sweethearts. Pressured and afraid of the petitioner's threat to end their relationship, AAA succumbed and both had sexual intercourse.

Upon discovery of what AAA underwent, BBB, AAA's mother lodged a complaint in the Office of the City Prosecutor of Pasay City which led to the filing of Criminal Case No. 00-0691.

Petitioner did not make a plea when arraigned; hence, the trial court entered for him a plea of "not guilty." After the mandatory pre-trial, trial on the merits proceeded.

The trial court found the evidence for the prosecution sufficient to sustain petitioner's conviction. On March 7, 2001, it rendered a decision finding petitioner guilty.

Petitioner questioned the trial court's decision in the CA. In a decision dated July 30, 2004, the appellate court affirmed his conviction even if it found that his acts were not covered by paragraph (a) but by paragraph (b) of Section 5, Article III of RA 7610. It further observed that the trial court failed to fix the minimum term of indeterminate sentence imposed on him. It also ruled that the trial court erred in awarding P75,000 civil indemnity in favor of AAA as it was proper only in a conviction for rape committed under the circumstances under which the death penalty was authorized by law.

Hence, this petition.

ISSUE:

Whether the CA erred in sustaining his conviction although it found that he did not rape AAA. (NO)

RULING:

In all criminal prosecutions, the accused is entitled to be informed of the nature and cause of the accusation against him. Pursuant thereto, the complaint or information against him should be sufficient in form and substance. A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense and the place where the offense was committed.

The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. The acts or omissions constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

The information against petitioner did not allege anything pertaining to or connected with child prostitution. It did not aver that AAA was abused for profit. What it charged was that petitioner had carnal knowledge or committed sexual intercourse and lascivious conduct with AAA; AAA was induced and/or seduced by petitioner who was her professor to indulge in sexual intercourse and lascivious conduct and AAA was a 17-year old minor. These allegations support a charge for violation of paragraph (b), not paragraph (a), of Section 5, Article III, RA 7610.

The designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. However, the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violateddoes not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged. What controls is not the title of the information or the designation of the offense but the actual facts recited in the information. In other words, it is the recital of facts of the commission of the offense, not the nomenclature of the offense, that determines the crime being charged in the information.

The facts stated in the amended information against petitioner correctly made out a charge for violation of Section 5(b), Article III, RA 7610. Thus, even if the trial and appellate courts followed the wrong designation of the offense, petitioner could be convicted of the offense on the basis of the facts recited in the information and duly proven during trial.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, - versus- BERNABE PAREJA y CRUZ, *Accused-Appellant.*
G.R. No. 202122, FIRST DIVISION, January 15, 2014, LEONARDO-DE CASTRO*, J.*

The peculiar designation of time in the Information clearly violates Sec. 11, Rule 110, of the Rules Court which requires that the time of the commission of the offense must be alleged as near to the actual date as the information or complaint will permit.

FACTS:

On May 5, 2004, Pareja was charged with two counts of Rape and one Attempted Rape.The Informations for the three charges read as follows:

I. For the two counts of Rape:

> Criminal Case No. 04-15 5 6-CFM
>
> That on or about and sometime in the month of February, 2004, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Bernabe Pareja y Cruz, being the common law spouse of the minor victim's mother, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously commit an act of sexual assault upon the person of [AAA], a minor 13 years of age, by then and there mashing her breast and inserting his finger inside her vagina against her will.

Criminal Case No. 04-1557-CFM

That on or about and sometime in the month of December, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Bernabe Pareja y Cruz, being the stepfather of [AAA], a minor 13 years of age, through force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of said minor against her will.

II. For the charge of Attempted Rape:

> Criminal Case No. 04-1558-CFM
>
> That on or about the 27th day of March, 2004, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, BERNABE PAREJA Y CRUZ, being the common law spouse of minor victim's mother by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously commence the commission of the crime of Rape against the person of minor, [AAA], a13 years old minor by then and there crawling towards her direction where she was sleeping, putting off her skirt, but did not perform all the acts of execution which would have produce[d] the crime of rape for the reason other than his own spontaneous desistance, that is the timely arrival of minor victim's mother who confronted the accused, and which acts of child abuse debased, degraded and demeaned the intrinsic worth and dignity of said minor complainant as a human being.

On June 17, 2004, Pareja, during his arraignment, pleaded not guilty to the charges filed against him. After the completion of the pre-trial conference on September 16, 2004, trial on the merits ensued.

To exculpate himself from liability, Pareja offered both denial and ill motive of AAA against him as his defense. He denied raping AAA but admitted that he knew her as she is the daughter of his live-in partner and that they all stay in the same house. He contended that AAA filed these charges against him only as an act of revenge because AAA was mad at him for being the reason behind her parents' separation.

On January 16, 2009, the RTC acquitted Pareja from the charge of attempted rape but convicted him of the crimes of rape and acts of lasciviousness.

Wanting to reverse his two convictions, Pareja appealed to the Court of Appeals, which on January 19, 2012, affirmed in toto the judgment of the RTC. Hence, this petition.

ISSUE:

Whether the trial court gravely erred in convicting Pareja of the crimes charged. (NO)

RULING:

Pareja repeatedly invokes our ruling in People v. Ladrillo, implying that our rulings therein are applicable to his case. However, the factual circumstances in Ladrillo are prominently missing in Pareja's case. In particular, the main factor for Ladrillo's acquittal in that case was because his constitutional right to be informed of the nature and cause of the accusation against him was violated when the Information against him only stated that the crime was committed "on or about the year 1992." We said:

> The peculiar designation of time in the Information clearly violates Sec. 11, Rule 110, of the Rules Court which requires that the time of the commission of the offense must be alleged as near to the actual date as the information or complaint will permit. More importantly, it runs afoul of the constitutionally protected right of the accused to be informed of the nature and cause of the accusation against him. The Information is not sufficiently explicit and certain as to time to inform accused-appellant of the date on which the criminal act is alleged to have been committed.
>
> The phrase "on or about the year 1992" encompasses not only the twelve (12) months of 1992 but includes the years prior and subsequent to 1992, e.g., 1991 and 1993, for which accused-appellant has to virtually account for his whereabouts. Hence, the failure of the prosecution to allege with particularity the date of the commission of the offense and, worse, its failure to prove during the trial the date of the commission of the offense as alleged in the Information, deprived accused-appellant of his right to intelligently prepare for his defense and convincingly refute the charges against him. At most, accused-appellant could only establish his place of residence in the year indicated in the Information and not for the particular time he supposedly committed the rape.
>
> x x x x
>
> Indeed, the failure of the prosecution to prove its allegation in the Information that accused-appellant raped complainant in 1992 manifestly shows that the date of the commission of the offense as alleged was based merely on speculation and conjecture, and a conviction anchored mainly thereon cannot satisfy the quantum of evidence required for a pronouncement of guilt, that is, proof beyond reasonable doubt that the crime was committed on the date and place indicated in the Information.

In this case, although the dates of the December 2003 and February 2004 incidents were not specified, the period of time Pareja had to account for was fairly short, unlike "on or about the year 1992." Moreover, Ladrillo was able to prove that he had only moved in the house where the rape

supposedly happened, in 1993, therefore negating the allegation that he raped the victim in that house in 1992.

While it may be true that the inconsistencies in the testimony of the victim in Ladrillo contributed to his eventual acquittal, this Court said that they alone were not enough to reverse Ladrillo's conviction, viz:

> Moreover, there are discernible defects in the complaining witness' testimony that militates heavily against its being accorded the full credit it was given by the trial court. Considered independently, the defects might not suffice to overturn the trial court's judgment of conviction, but assessed and weighed in its totality, and in relation to the testimonies of other witnesses, as logic and fairness dictate, they exert a powerful compulsion towards reversal of the assailed judgment.

It is worthy to note that Ladrillo also offered more than just a mere denial of the crime charged against him to exculpate him from liability. He also had an alibi, which, together with the other evidence, produced reasonable doubt that he committed the crime as charged. In contrast, Pareja merely denied the accusations against him and even imputed ill motive on AAA.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- GUILLERMO LOMAQUE, *Accused-Appellant.*
G.R. No. 189297, SECOND DIVISION, June 5, 2013, DEL CASTILLO, *J.*

"AAA" having positively identified the assailant to be the appellant and no other, the latter's proffered defense of denial must fail. "Denial could not prevail over the victim's direct, positive and categorical assertion."

FACTS:

Appellant was charged under separate Informations for 13 counts of Rape by Sexual Intercourse allegedly committed against his stepdaughter "AAA". Except as to the dates of occurrence and the age of "AAA" at the time of the commission of the crimes, the accusatory portions in the Informations are similarly worded.

In addition, appellant was also charged with Acts of Lasciviousness in relation to Section 5 of Republic RA No. 7610, as amended.

At arraignment, appellant entered a plea of not guilty to all the Informations. Soon the cases were set for Pre-Trial where only the minority of "AAA" was stipulated upon. Accordingly, the joint trial on the merits ensued.

He denied that he sexually abused AAA, claiming that he could not have committed the crimes charged because as a bio-medical technician, he was deployed all over the country to repair hospital equipment. He offered several plane tickets in support of this allegation. He likewise testified that his parents-in-law and sister-in-law were living with them.

After trial, the RTC found "AAA" to be a credible witness and rejected the defense of denial and alibi proffered by the appellant. Consequently, it rendered a Decision dated October 23, 2007 which declared appellant guilty of seven counts of rape by sexual intercourse, one count of rape by sexual

assault and one count of Acts of Lasciviousness. Accordingly, the RTC sentenced appellant to imprisonment and ordered him to pay damages.

Appellant thus assailed his conviction before the CA.

In his Brief, appellant faulted the trial court in giving full weight and credence to "AAA's" testimony and in finding him guilty beyond reasonable doubt of the crimes charged. The OSG, for the plaintiff-appellee People of the Philippines, on the other hand prayed for the affirmance of the assailed Judgment contending that "AAA's" testimony is clear, candid and straightforward. It contended that appellant's culpability was established beyond reasonable doubt.

The CA, however, was not impressed with the arguments of the appellant, and hence rendered its Decision dated July 30, 2009 affirming the Decision of the RTC. Hence, this petition.

ISSUE:

Whether the prosecution has proven beyond reasonable doubt the guilt of appellant for the crimes of rape and acts of lasciviousness.

RULING:

In his attempt to discredit "AAA," appellant contends that "AAA's" silence and failure to divulge her alleged horrifying ordeal to immediate relatives despite the claim that it happened for several times run counter to the natural reaction of an outraged maiden despoiled of her honor.

We are not persuaded. "AAA's" momentary inaction will neither diminish nor affect her credibility. "The filing of complaints of rape months, even years, after their commission may or may not dent the credibility of witness and of testimony, depending on the circumstances attendant thereto." "It does not diminish the complainant's credibility or undermine the charges of rape when the delay can be attributed to the pattern of fear instilled by the threats of bodily harm, specially by one who exercises moral ascendancy over the victim. "In this case, not long after the initial rape, appellant threatened "AAA" that he would kill her and her mother if ever she would tell anyone about what happened. At that time, "AAA" was only 11 years old and was living under the same roof with the latter whom she treated as a father. Obviously, the threat "AAA" received from appellant, coupled with his moral ascendancy, is enough to cow and intimidate "AAA." Being young and inexperienced, it instilled tremendous fear in her mind. In People v. Domingo, we ruled that the effect of fear and intimidation instilled in the victim's mind cannot be measured against any given hard-and-fast rule such that it is viewed in the context of the victim's perception and judgment not only at the time of the commission of the crime but also at the time immediately thereafter. In any event, "the failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge.
"AAA" having positively identified the assailant to be the appellant and no other, the latter's proffered defense of denial must fail. "Denial could not prevail over the victim's direct, positive and categorical assertion."As to his alibi, appellant failed to substantiate the same with clear and convincing evidence. The plane tickets he submitted in evidence to show that he was in other places during the incidents are irrelevant. As correctly observed by the RTC, the tickets were all issued in 1994 while the incidents subject of the Informations charging appellant with rape transpired from 1996 to 1999. Thus, appellant's alibi being uncorroborated and unsubstantiated by clear and convincing evidence, is self-serving and deserves no weight in law.

In fine, "AAA's" woeful tale of her harrowing experience in the hands of the appellant is impressively clear, definite and convincing.*1âwphi1* Her detailed narration of the incidents, given in a spontaneous and frank manner and without any fanfare, were beyond cavil well-founded. We therefore sustain the RTC's and the CA's findings of appellant's guilt.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- PABLO AMODIA, *Accused-Appellant*. G.R. No. 173791, SECOND DIVISION, April 7, 2009, BRION, *J.*

We state in this regard that positive identification pertains essentially to proof of identity and not necessarily to the name of the assailant. A mistake in the name of the accused is not equivalent, and does not necessarily amount to, a mistake in the identity of the accused especially when sufficient evidence is adduced to show that the accused is pointed to as one of the perpetrators of the crime.

FACTS:

Pablo was indicted, together with three other accused, under the following Information:

> That on or about the 26th day of November 1996, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, while armed with a piece of wood and bladed weapon, taking advantage of their superior strength [*sic*] and employing means to weaken the defense, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon one FELIX OLANDRIA y BERGAÑO, by beating him on the head with a piece of wood and stabbing him repeatedly on the different parts of his body, thereby inflicting upon him mortal/fatal stab wounds which directly caused his death.

The Information, dated February 21, 1997, was filed with the court on February 28, 1997.

Pablo was arrested on June 5, 1998 and was thereafter prosecuted. The other accused remained at large. Pablo moved to quash the Information on the ground of mistaken identity and the staleness of the warrant of arrest issued on March 4, 1997. The RTC denied his motion.

Pablo entered a plea of "not guilty" to the charge when arraigned on August 3, 1998. Thereafter, the prosecution presented evidence, both documentary and testimonial, to establish that Pablo was one of the four assailants who, by their concerted efforts, killed Felix Olandria *y* Bergaño (victim). Acting together, they hit him on the head and stabbed him.

The defense relied on the defense of *alibi*, submitting testimonial and documentary evidence to support Pablo's claim that he was in another place at the time of the stabbing. Pablo also averred that his name is Pablito Amodia and stated that at the time of the incident, he lived in the house of Elma Amodia Romero, his sister, located at Zone 13, Ilocos Street, *Barangay* Rizal, Makati City.

The prosecution presented Amelita Sagarino, a resident of Scorpion Street, Zone 17 since 1989, as a rebuttal witness. She testified that she knew the victim and the accused who were all her neighbors. She stated that she served food at the victim's wake from seven in the evening up to six in the morning and that she never saw Pablo there. She also heard from her neighbors that the people responsible for the victim's death were George, Arnold, Damaso, Pabling and Pablito Amodia. She clarified that Pabling and Pablito Amodia are one and the same person.

The RTC convicted Pablo of murder after finding sufficient evidence of his identity, role in the crime as principal by direct participation, and conspiracy between him and the other accused who used their superior strength to weaken the victim. The RTC relied on the testimonies of eyewitnesses Romildo Ceno and Luther Caberte, the autopsy results conducted on the body of the victim, and the lack of physical impossibility on the part of Pablo to be at the crime scene.

On appeal, the CA agreed with the RTC's findings and affirmed Pablo's conviction. Hence, this petition.

ISSUE:

Whether the eyewitnesses committed a mistake in identifying Pablo as one of the assailants. (NO)

RULING:

A review of the records fails to persuade us to overturn Pablo's judgment of conviction. The witnesses never wavered, despite the contrary efforts of the defense, in their positive identification of Pablo as one of the assailants of the victim. The records glaringly show the defense counsel's vain efforts to prove that these eyewitnesses committed a mistake in identifying Pablo as one of the assailants since his name was allegedly Pablito Amadio, and not Pablo.

We state in this regard that positive identification pertains essentially to *proof of identity* and not necessarily to the name of the assailant. A mistake in the name of the accused is not equivalent, and does not necessarily amount to, a mistake in the identity of the accused especially when sufficient evidence is adduced to show that the accused is pointed to as one of the perpetrators of the crime. In this case, the defense's line of argument is negated by the undisputed fact that the accused's identity was known to both the eyewitnesses. On the one hand, we have Romildo's testimony stating that Pablo lived across Scorpion Street from where he lived. He also stated that he had known Pablo for more than a year. On the other hand, Luther testified that he had known Pablo since 1986 because they were neighbors and that he even played basketball with him. We stress that Pablo never denied these allegations.

In People v. Ducabo, we took notice of the human trait that once a person knows another through association, identification becomes an easy task even from a considerable distance; most often, the face and body movements of the person identified has created a lasting impression on the identifier's mind that cannot easily be erased.

The association the eyewitnesses cited – specifically, being neighbors and even basketball game mates – rendered them familiar with Pablo, making it highly unlikely that they could have committed a mistake in identifying him as one of the assailants. Their identification came at the first opportunity (*i.e.*, when they revealed) what they knew of the killing and culminated with their courtroom identification of Pablo as among those who assaulted the victim.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- MARCELO MENDOZA, *Appellant*.
G.R. Nos. 132923-24, EN BANC, June 10, 2002, PANGANIBAN, J.

In People v. De la Cuesta, we explained thus:

> *"It would be a denial of the right of the accused to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape, on which he was arraigned, and be convicted of qualified rape punishable by death."*

Aggravating and qualifying circumstances must be categorically alleged in the Information; otherwise, they cannot be appreciated.

FACTS:

On June 25, 1995, private complainant Michelle Tolentino, then 13 years old, together with her aunt, went to the river to wash clothes at about 7:00 in the morning. They finished doing the laundry at about 2:00 in the afternoon. Michelle proceeded to go ahead with some of the laundry. She left her aunt in the river while Michelle started to cart some of the clothes home.

Michelle then went on her way, passing through the coffee plantation of Ben Salazar. When she approached a curve on the road, she saw appellant Marcelo Mendoza standing there, watching her. Without much ado, appellant pulled her, going into the thickest part of the plantation.

Thereafter, the appellant threatened her with a bolo that he was then carrying.The bolo, however, was placed aside when appellant proceeded to rape Michelle by inserting his sex organ into her vagina. And though Michelle hollered for help, nobody came to succor her because the place was far and isolated. After he was through, appellant warned her against telling anyone about her ordeal.

The incident was repeated on August 11, 1995. Just like before, the rape occurred inside Ben Salazar's coffee plantation. As before, appellant intimidated and threatened Michelle with the use of his bolo.

Fearful that appellant might repeat the incident, Michelle told her mother about the rapes, sometime in December 1995. She gave her complaint-statement on the same day and was referred to Dr. Garcia Dela Cruz for medical examination, who testified that Michelle must have been raped because there was resistance on her vaginal canal, which upon internal examination admits 2fingers, an indication that she had sexual intercourse.

For his defense, accused Marcelo Mendoza testified that on June 25, 1995, he was at the Sports Center in Marikina attending mass. He left his house at Tubuan Silang Cavite at 8:00 to 9:00 o'clock in the morning. He also testified that on August 11, 1995, he left the house early in the morning to meet a buyer at Adamson University. He was home 5:00 o'clock in the afternoon of the same day. Upon arrival, he saw his colleagues in their religious organization and together they went to Marikina to attend the religious service at the sports center and stayed there overnight.

He also testified that he knows Michelle Tolentino, her neighbor. He could not understand why he was charged with rape, as her parents are like his brother and sister and they have a good relationship. Furthermore, he testified that the parents of the complainant were extorting money from him because they learned, that as agent, he was able to obtain a commission from selling land.

The RTC believed the testimony of complainant, because it was straightforward, convincing and credible. The RTC further found that he "was armed with a bolo . . . which he used to cause private complainant Michelle Tolentino to submit to his carnal desires" on June 25, 1995 and August 11, 1995. Hence, it convicted him of rape qualified by the use of a deadly weapon.

ISSUE:

Whether the trial court erred in imposing the extreme penalty of death on the accused-appellant despite the charges of simple rapes against him in the Informations.

RULING:

Both Informations in the present case charged appellant with simple rape which, under Article 335 of the Revised Penal Code, is punishable with reclusion perpetua. Neither one of these alleged that the rapes were committed with the use of a deadly weapon.

In People v. De la Cuesta, we explained thus:

> "It would be a denial of the right of the accused to be informed of the charges against him, and consequently, a denial of due process, if he is charged with simple rape, on which he was arraigned, and be convicted of qualified rape punishable by death."

Aggravating and qualifying circumstances must be categorically alleged in the Information; otherwise, they cannot be appreciated.

In this case, as contended by both the defense counsel and the OSG, appellant cannot be convicted of rape qualified by the use of a deadly weapon, since that circumstance was not alleged in the Informations. He cannot be punished for an offense graver than that for which he was charged.

Moreover, the records and Michelle's own categorical statement under questioning indicate that appellant had merely kept the bolo by his side and held it only when he undressed himself — naturally, so that he could remove it from his body.

The crime of rape is not qualified by the use of a deadly weapon where, even as the accused carried a bolo in his waist, as he usually did, he never used the same to threaten the victim. What can qualify the offense under Republic Act 7659 so as to warrant the imposition of the death penalty would be when the rape is committed with the use of a deadly weapon and not just the overt act of being armed with a weapon.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- BARTOLOME TAMPUS and IDA MONTESCLAROS, Defendants, IDA MONTESCLAROS, *Appellant*.
G.R. No. 181084, FIRST DIVISION, June 16, 2009, PUNO, C.J.

Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings will be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state the qualifying and the aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty.

FACTS:

The offended party, ABC, is the daughter of appellant Ida, and was 13 years old at the time of the incident. On February 19, 1995, Ida and ABC started to rent a room in a house owned by Tampus, a barangay tanod.

On April 1, 1995, about 4:30 p.m., ABC testified that she was in the house with Ida and Tampus who were both drinking beer at that time. They forced her to drink beer and after consuming 3 ½ glasses of beer, she became intoxicated and very sleepy. While ABC was lying on the floor of their room, she overheard Tampus requesting her mother, Ida, that he be allowed to "remedyo" or have sexual intercourse with her. Appellant Ida agreed and instructed Tampus to leave as soon as he finished having sexual intercourse with ABC. Ida then went to work, leaving Tampus alone with ABC. ABC fell asleep and when she woke up, she noticed that the garter of her panties was loose and rolled down to her knees. She suffered pain in her head, thighs, buttocks, groin and vagina, and noticed that her panties and short pants were stained with blood which was coming from her vagina. When her mother arrived home from work the following morning, she kept on crying but appellant Ida ignored her.

ABC then testified that she was once again raped by Tampus on April 4, 1995 at around 1:00 am. Tampus also threatened to kill her if she would report the previous sexual assault to anyone. When ABC told appellant Ida about the incident, the latter again ignored her.

On May 4, 1995, ABC told Nellie Montesclaros, her aunt, about the rape and that her mother sold her. ABC, together with Nellie and Norma Andales, a traffic enforcer, reported the incident of rape to the police. On May 9, 1995, Nestor A. Sator, head of the Medico-Legal Branch of the Philippine National Crime Laboratory Services, Regional Unit 7, conducted a physical examination of ABC and issued a Medico-Legal Report. Dr. Sator testified that the result of his examination of ABC revealed a deep healed laceration at the7o'clock position and a shallow healed laceration at the 1o'clock position on ABC's hymen.

On September 22, 1995, ABC filed two Complaints against Tampus for having sexual intercourse with her, against her will. She also declared that the first incident was done in conspiracy with accused Ida who gave permission to Tampus to rape her.

Tampus denied raping ABC. Appellant Ida also testified that she always brought her daughter to the beer house with her and there was never an instance when she left her daughter alone in the house. She denied forcing ABC to drink beer at 4:30 p.m. of April 1, 1995, and she denied giving permission to Tampus to have sexual intercourse with ABC.

Agustos B. Costas, the Head of the Department of Psychiatry of the Vicente Sotto Memorial Medical Center, issued a Medical Certification, which showed that appellant Ida was treated as an outpatient at the Vicente Sotto Memorial Medical Center Psychiatry Department from November 11, 1994 to January 12, 1995 and was provisionally diagnosed with Schizophrenia, paranoid type.

The trial court convicted Tampus of two counts of rape, as principal. The trial court appreciated in Ida's favor the mitigating circumstance of illness which would diminish the exercise of will-power without depriving her of the consciousness of her acts, pursuant to Article 13(9) of the Revised Penal Code.

Pending resolution of the appeal before the Court of Appeals, accused Tampus died on November 16, 2000 and his appeal was dismissed by the Third Division of this Court. Thus, the appeal before the Court of Appeals dealt only with that of appellant Ida. The appellate court appreciated the mitigating circumstance of illness in favor of Ida but found that Ida failed to prove that she was completely deprived of intelligence on April 1, 1995.

Appellant Ida also argued that it is against human nature for a mother to allow her daughter to be raped. She maintained that there was no instance when she left ABC alone in the house. The Court of Appeals dismissed appellant Ida's appeal as it also gave credence to the testimony of ABC.

Hence, this petition.

ISSUE:

Whether Ida's relationship with the victim can be considered as a special qualifying circumstance. (NO)

RULING:

We note that in the case at bar, the undisputed fact that Ida is the mother of ABC—who was 13 years old at the time of the incident—could have been considered as a special qualifying circumstance which would have increased the imposable penalty to death, under Article 266-B of the Revised Penal Code.

In the case at bar, although the victim's minority was alleged and established, her relationship with the accused as the latter's daughter was not properly alleged in the Information, and even though this was proven during trial and not refuted by the accused, it cannot be considered as a special qualifying circumstance that would serve to increase the penalty of the offender. Under the 2000 Rules of Criminal Procedure, which should be given retroactive effect following the rule that statutes governing court proceedings will be construed as applicable to actions pending and undetermined at the time of their passage, every Information must state the qualifying and the aggravating circumstances attending the commission of the crime for them to be considered in the imposition of the penalty. Since in the case at bar, the Information in Criminal Case No. 013324-L did not state that Ida is the mother of ABC, this circumstance could not be appreciated as a special qualifying circumstance. Ida may only be convicted as an accomplice in the crime of simple rape, which is punishable by reclusion perpetua. In any event, Republic Act No. 9346, entitled an "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006 prohibits the imposition of the death penalty.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RICKY ALFREDO y NORMAN, *Accused-Appellant*.
G.R. No. 188560, FIRST DIVISION, December 15, 2010, VELASCO, JR., J.

Nevertheless, People v. Catubig laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. Catubig reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.

FACTS:

AAA, who was 6 months pregnant, filed 2 separate Informations against the accused-appellant, the accusatory portions of which read:

Criminal Case No. 01-CR-4213

That sometime in the period from April 28-29, 2001, at Cadian, Topdac, Municipality of Atok, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a thirty six (36) year old woman, against her will and consent, to her damage and prejudice.

Criminal Case No. 01-CR-4214

That sometime in the period from April 28-29, 2001, at Cadian, Topdac, Municipality of Atok, Province of Benguet, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously commit an act of sexual assault by inserting a flashlight into the vagina of one [AAA], a thirty six (36) year old woman, against her will and consent, to her damage and prejudice.

On June 21, 2001, accused-appellant, with the assistance of counsel, pleaded not guilty to both charges. Thereafter, trial on the merits ensued.

During the trial, Dr. Ged-ang testified that he conducted an internal examination of the genitalia of AAA. Dr. Ged-ang found that there was confluent abrasion on the left and medial aspects of her *labia minora* about five centimeters long and a confluent circular abrasion caused by a blunt, rough object that has been forcibly introduced into the genitalia.

On February 17, 2006, the RTC rendered its Decision finding accused-appellant guilty of two counts of rape.

On appeal, the CA in its Decision dated September 30, 2008, affirmed the judgment of conviction by the trial court. Furthermore, the CA ordered the accused-appellant to pay civil indemnity, moral damages and exemplary damages. Undaunted, accused-appellant filed a motion for reconsideration, which was denied by the CA in its Resolution dated March 19, 2009.

On April 21, 2009, accused-appellant filed his Notice of Appeal from the CA Decision dated September 30, 2008.

ISSUE:

Whether AAA is entitled to exemplary damages even if the aggravating circumstance has not been alleged. (YES)

RULING:

We explained in People v. Cristobal that "for sexually assaulting a pregnant married woman, the accused has shown moral corruption, perversity, and wickedness. He has grievously wronged the institution of marriage. The imposition then of exemplary damages by way of example to deter others from committing similar acts or for correction for the public good is warranted." Notably, there were instances wherein exemplary damages were awarded despite the absence of an aggravating circumstance. As we held in People v. Dalisay:

> Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages. x x x

Nevertheless, People v. Catubig laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. Catubig reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.Catubig is enlightening on this point, thus –

> x x x
>
> **Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. x x x**

Concomitantly, exemplary damages in the amount of PhP 30,000 should be awarded for each count of rape, in line with prevailing jurisprudence.

DATU GUIMID P. MATALAM, *Petitioner*, -versus-THE SECOND DIVISION OF THE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 165751, SECOND DIVISION, April 12, 2005, CHICO-NAZARIO, J.

According to Retired Senior Associate Justice Florenz D. Regalado, before the plea is taken, the information may be amended in substance and/or form, without leave of court; but if amended in substance, the accused is entitled to another preliminary investigation, unless the amended charge is related to or is included in the original charge.

Thus, the rule is: Before or after a plea, a substantial amendment in an information entitles an accused to another preliminary investigation. However, if the amended information contains a charge related to or is included in the original information, a new preliminary investigation is not required.

FACTS:

An information dated 15 November 2004 was filed before the Sandiganbayan charging petitioner Datu Guimid Matalam, Habib A. Bajunaid, Ansari M. Lawi, Muslimin Unga and Naimah Unte with violation of Section 3(e) of Republic Act No. 3019, as amended, for their alleged illegal and unjustifiable refusal to pay the monetary claims of Kasan I. Ayunan, Abdul E. Zailon, Esmael A. Ebrahim, Annabelle Zailon, Pendatun Mambatawan, Hyria Mastura and Faizal I. Hadil.

On 14 August 2002, petitioner filed a Motion for Reinvestigation, which was granted by the court. Thereafter, the petitioner filed his Counter-Affidavit.

After the reinvestigation, the public prosecutor filed a "Manifestation and Motion to Admit Amended Information Deleting the Names of Other Accused Except Datu Guimid Matalam" to which petitioner filed a Motion to Dismiss and Opposition to the Motion to Admit the Alleged Amended Information Against the Accused Guimid P. Matalam. Thereafter, the public prosecutor filed his Replyto which petitioner filed a Rejoinder.

In his Motion to Dismiss, petitioner alleged that the amended information charges an entirely new cause of action. The *corpus delicti* of the amended information is no longer his alleged refusal to pay the backwages ordered by the Civil Service Commission, but the alleged willful, unlawful and illegal dismissal from the service of the complaining witnesses. He then insisted that he is entitled to a new preliminary investigation.

On 12 January 2004, the Sandiganbayan granted the Manifestation and Motion to Admit Amended Information Deleting the Names of Other Accused Except Datu Guimid P. Matalam. It admitted the Amended Information charging solely petitioner for Violation of Section 3(e) of Rep. Act No. 3019.

Hence, this petition.

ISSUE:

Whether the amended Information was prejudicial to Datu Guimid P. Matalam. (YES)

RULING:

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form.

The following have been held to be merely formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.

The test as to whether a defendant is prejudiced by the amendment has been said to be whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.

In the case at bar, the amendment was indeed substantial. The recital of facts constituting the offense charged was definitely altered. In the original information, the prohibited act allegedly committed by petitioner was the illegal and unjustifiable refusal to pay the monetary claims of the private

complainants, while in the amended information, it is the illegal dismissal from the service of the private complainants. However, it cannot be denied that the alleged illegal and unjustifiable refusal to pay monetary claims is related to, and arose from, the alleged illegal dismissal from the service of the private complainants.

According to Retired Senior Associate Justice Florenz D. Regalado, before the plea is taken, the information may be amended in substance and/or form, without leave of court; but if amended in substance, the accused is entitled to another preliminary investigation, unless the amended charge is related to or is included in the original charge.

Thus, the rule is: Before or after a plea, a substantial amendment in an information entitles an accused to another preliminary investigation. However, if the amended information contains a charge related to or is included in the original information, a new preliminary investigation is not required.

EDUARDO G. RICARZE, *Petitioner*, -versus- COURT OF APPEALS, PEOPLE OF THE PHILIPPINES, CALTEX PHILIPPINES, INC., PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK (PCIBANK), *Respondents*.
G.R. No. 160451, THIRD DIVISION, February 9, 2007, CALLEJO, SR., J.

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following have been held to be mere formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; and (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.

FACTS:

Petitioner Eduardo G. Ricarze was employed as a collector-messenger by City Service Corporation, a domestic corporation engaged in messengerial services. He was assigned to the main office of Caltex Philippines, Inc. (Caltex) in Makati City. His primary task was to collect checks payable to Caltex and deliver them to the cashier. He also delivered invoices to Caltex's customers.

On November 6, 1997, Caltex, through its Banking and Insurance Department Manager Ramon Romano, filed a criminal complaint against petitioner before the Office of the City Prosecutor of Makati City for estafa through falsification of commercial documents.

Petitioner was arraigned on August 18, 1998 and pleaded not guilty to both charges. Pre-trial and thereafter, trial on the merits ensued. The prosecution presented its witnesses, after which the Siguion Reyna, Montecillio and Ongsiako Law Offices (SRMO) as private prosecutor filed a Formal Offer of Evidence. Petitioner opposed the pleading, contending that the private complainant was represented by the ACCRA Law Offices and the Balgos and Perez Law Office during trial, and it was only after the prosecution had rested its case that SRMO entered its appearance as private prosecutor representing the PCIB. Since the ACCRA and Balgos and Perez Law Offices had not withdrawn their

appearance, SRMO had no personality to appear as private prosecutor. Under the Informations, the private complainant is Caltex and not PCIB; hence, the Formal Offer of Evidence filed by SRMO should be stricken from the records.

Petitioner further averred that unless the Informations were amended to change the private complainant to PCIB, his right as accused would be prejudiced. He pointed out, however, that the Informations can no longer be amended because he had already been arraigned under the original Informations.

PCIB, through SRMO, opposed the motion. It contended that the PCIB had re-credited the amount to Caltex to the extent of the indemnity; hence, the PCIB had been subrogated to the rights and interests of Caltex as private complainant.

Petitioner filed a Motion to Expunge the Opposition of SRMO. In his Rejoinder, he averred that the Information must be amended to allege that the private complainant was PCIB and not Caltex after the preliminary investigation of the appropriate complaint of PCIB before the Makati City Prosecutor.

In response, the PCIB, through SRMO, averred that as provided in Section 2, Rule 110 of the Revised Rules of Criminal Procedure, the erroneous designation of the name of the offended party is a mere formal defect which can be cured by inserting the name of the offended party in the Information.

On July 18, 2001, the RTC issued an Order granting the motion of the private prosecutor for the substitution of PCIB as private complainant for Caltex. It however denied petitioner's motion to have the formal offer of evidence of SRMO expunged from the record. Petitioner filed a motion for reconsideration which the RTC denied on November 14, 2001.

Petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with Urgent Application for Temporary Restraining Order with the CA, which was dismissed on November 5, 2002. Petitioner's Motion for Reconsideration was likewise denied by the appellate court.

Hence, this petition.

ISSUE:

Whether the substitution of Caltex by PCIB as private complaint is a substantial amendment. (NO)

RULING:

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following have been held to be mere formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; and (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.

The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.

In the case at bar, the substitution of Caltex by PCIB as private complaint is not a substantial amendment. The substitution did not alter the basis of the charge in both Informations, nor did it result in any prejudice to petitioner. The documentary evidence in the form of the forged checks remained the same, and all such evidence was available to petitioner well before the trial. Thus, he cannot claim any surprise by virtue of the substitution.

SSGT. JOSE M. PACOY, *Petitioner*, -versus- HON. AFABLE E. CAJIGAL, PEOPLE OF THE PHILIPPINES and OLYMPIO L. ESCUETA, *Respondents.*
G.R. No. 157472, THIRD DIVISION, September 28, 2007, AUSTRIA-MARTINEZ, J.

In determining whether there should be an amendment under the first paragraph of Section 14, Rule 110, or a substitution of information under the second paragraph thereof, the rule is that where the second information involves the same offense, or an offense which necessarily includes or is necessarily included in the first information, an amendment of the information is sufficient; otherwise, where the new information charges an offense which is distinct and different from that initially charged, a substitution is in order.

FACTS:

On July 4, 2002, an Information for Homicide was filed in the RTC against petitioner committed as follows:

> That on or about the 18th day of March 2002, in the Municipality of Mayantoc, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said accused with intent to kill, did then and there wilfully, unlawfully and feloniously shot his commanding officer 2Lt. Frederick Esquita with his armalite rifle hitting and sustaining upon 2Lt. Frederick Esquita multiple gunshot wounds on his body which caused his instantaneous death.
>
> With the aggravating circumstance of killing, 2Lt. Frederick Esquita in disregard of his rank.

On September 12, 2002, upon arraignment, petitioner, duly assisted by counsel *de parte*, pleaded not guilty to the charge of Homicide. Respondent Judge set the pre-trial conference and trial on October 8, 2002.However, on the same day and after the arraignment, the respondent judge issued another Order, likewise dated September 12, 2002, directing the trial prosecutor to correct and amend the Information to Murder in view of the aggravating circumstance of disregard of rank alleged in the Information which public respondent registered as having qualified the crime to Murder.

The prosecutor entered his amendment by crossing out the word "Homicide" and instead wrote the word "Murder" in the caption and in the opening paragraph of the Information.

On the date scheduled for pre-trial conference and trial, petitioner was to be re-arraigned for the crime of Murder. Counsel for petitioner objected on the ground that the latter would be placed in double jeopardy, considering that his Homicide case had been terminated without his express consent, resulting in the dismissal of the case. As petitioner refused to enter his plea on the amended Information for Murder, the public respondent entered for him a plea of not guilty.

On October 8, 2002, petitioner filed a Motion to Quash with Motion to Suspend Proceedings Pending the Resolution of the Instant Motion on the ground of double jeopardy. Petitioner alleged that in the Information for Homicide, he was validly indicted and arraigned before a competent court, and the case was terminated without his express consent; that when the case for Homicide was terminated without his express consent, the subsequent filing of the Information for Murder in lieu of Homicide placed him in double jeopardy.

On October 25, 2002, the respondent judge denied the Motion to Quash. He ruled that a claim of former acquittal or conviction does not constitute double jeopardy and cannot be sustained unless judgment was rendered acquitting or convicting the defendant in the former prosecution; that petitioner was never acquitted or convicted of Homicide, since the Information for Homicide was merely corrected/or amended before trial commenced and did not terminate the same; that the Information for Homicide was patently insufficient in substance, so no valid proceedings could be taken thereon.

Petitioner then filed for a Motion for Reconsideration, alleging Petitioner that the amendment and/or correction ordered by the respondent judge was substantial; and under Section 14, Rule 110 of the Revised Rules of Criminal Procedure, this cannot be done, since petitioner had already been arraigned and he would be placed in double jeopardy.

On December 18, 2002, the respondent judge granted the Motion for Reconsideration.

Hence, this petition.

ISSUE:

Whether the respondent judge committed grave abuse of discretion in amending the Information after petitioner had already pleaded not guilty to the charge in the Information for Homicide. (NO)

RULING:

In determining whether there should be an amendment under the first paragraph of Section 14, Rule 110, or a substitution of information under the second paragraph thereof, the rule is that where the second information involves the same offense, or an offense which necessarily includes or is necessarily included in the first information, an amendment of the information is sufficient; otherwise, where the new information charges an offense which is distinct and different from that initially charged, a substitution is in order.

There is identity between the two offenses when the evidence to support a conviction for one offense would be sufficient to warrant a conviction for the other, or when the second offense is exactly the same as the first, or when the second offense is an attempt to commit or a frustration of, or when it necessarily includes or is necessarily included in, the offense charged in the first information. In this connection, an offense may be said to necessarily include another when some of the essential

elements or ingredients of the former, as this is alleged in the information, constitute the latter. And, vice-versa, an offense may be said to be necessarily included in another when the essential ingredients of the former constitute or form a part of those constituting the latter.

In the present case, the change of the offense charged from Homicide to Murder is merely a formal amendment and not a substantial amendment or a substitution.

While the amended Information was for Murder, a reading of the Information shows that the only change made was in the caption of the case; and in the opening paragraph or preamble of the Information, with the crossing out of word "Homicide" and its replacement by the word "Murder." There was no change in the recital of facts constituting the offense charged or in the determination of the jurisdiction of the court. The averments in the amended Information for Murder are exactly the same as those already alleged in the original Information for Homicide, as there was not at all any change in the act imputed to petitioner, i.e., the killing of 2Lt. Escueta without any qualifying circumstance. Thus, we find that the amendment made in the caption and preamble from "Homicide" to "Murder" as purely formal.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, vs. ARMANDO CHINGH Y PARCIA, *Accused-Appellant*.
G.R. No. 178323, SECOND DIVISION, March 16, 2011, PERALTA, *J.*

The CA correctly found Armando guilty of the crime of Rape Through Sexual Assault under paragraph 2, Article 266-A, of the Revised Penal Code, as amended by Republic Act No. (R.A.) 8353, or The Anti-Rape Law of 1997.From the Information, it is clear that Armando was being charged with two offenses, Rape under paragraph 1 (d), Article 266-A of the Revised Penal Code, and rape as an act of sexual assault under paragraph 2, Article 266-A. Armando was charged with having carnal knowledge of VVV, who was under twelve years of age at the time, under paragraph 1 (d) of Article 266-A, and he was also charged with committing an act of sexual assault by inserting his finger into the genital of VVV under the second paragraph of Article 266-A. Indeed, two instances of rape were proven at the trial. First, it was established that Armando inserted his penis into the private part of his victim, VVV. Second, through the testimony of VVV, it was proven that Armando also inserted his finger in VVV's private part.

The Information has sufficiently informed accused-appellant that he is being charged with two counts of rape. Although two offenses were charged, which is a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Nonetheless, Section 3, Rule 120 of the Revised Rules of Criminal Procedure also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." Consequently, since Armando failed to file a motion to quash the Information, he can be convicted with two counts of rape.

FACTS:

On March 19, 2005, an Information for Rape was filed against Armando for inserting his fingers and afterwards his penis into the private part of his minor victim, VVV.

Upon his arraignment, Armando pleaded not guilty to the charge. Consequently, trial on the merits ensued.

At the trial, the prosecution presented the testimonies of the victim, VVV; the victim's father; PO3 Ma. Teresa Solidarios; and Dr. Irene Baluyot. The defense, on the other hand, presented the lone testimony Armando as evidence.

Born on 16 September 1993, VVV was only 10 years old at the time of the incident. On 11 March 2004 at around 8:00 p.m., along with five other playmates, VVV proceeded to a store to buy food. While she was beckoning the storekeeper, who was not then at her station, Armando approached and pulled her hand and threatened not to shout for help or talk. Armando brought her to a vacant lot at Tindalo Street, about 400 meters from the store. While in a standing position beside an unoccupied passenger jeepney, Armando mashed her breast and inserted his right hand index finger into her private part. Despite VVV's pleas for him to stop, Armando unzipped his pants, lifted VVV and rammed his phallus inside her vagina, causing her to feel excruciating pain.

Threatened with death if she would tell anyone what had happened, VVV kept mum about her traumatic experience when she arrived home. Noticing her odd and uneasy demeanor as well as her blood-stained underwear, however, her father pressed her for an explanation. VVV confessed to her father about her unfortunate experience. Immediately, they reported the matter to the police authorities. After his arrest, Armando was positively identified by VVV in a police line-up.

The genital examination of VVV conducted by Dr. Irene Baluyot (Dr. Baluyot) of the Philippine General Hospital's Child Protection Unit, in the morning of 12 March 2004, showed a ''fresh laceration with bleeding at 6 o'clock position" in the child's hymen and "minimal bleeding from [said] hymen laceration." Her impression was that there was a "clear evidence"' of "penetrating trauma" which happened within 24 hours prior to the examination. The photograph of the lacerated genitalia of VVV strongly illustrated and buttressed Dr. Baluyot's medical report.

On April 29, 2005, the Regional Trial Court of Manila (RTC), Branch 43, after finding the evidence of the prosecution overwhelming against the accused's defense of denial and alibi, rendered a Decision convicting Armando of Statutory Rape.

Aggrieved, Armando appealed the Decision before the CA, which was docketed as CA-G.R. CR-H.C. No. 01119.

On December 29, 2006, the CA rendered a Decision finding Armando not only guilty of Statutory Rape, but also of Rape Through Sexual Assault.

ISSUE:

Whether or not Armando is guilty of Statutory Rape and Rape Through Sexual Assault. (YES)

RULING:

The CA correctly found Armando guilty of the crime of Rape Through Sexual Assault under paragraph 2, Article 266-A, of the Revised Penal Code, as amended by Republic Act No. (R.A.) 8353, or The Anti-Rape Law of 1997.From the Information, it is clear that Armando was being charged with two offenses, Rape under paragraph 1 (d), Article 266-A of the Revised Penal Code, and rape as an

act of sexual assault under paragraph 2, Article 266-A. Armando was charged with having carnal knowledge of VVV, who was under twelve years of age at the time, under paragraph 1 (d) of Article 266-A, and he was also charged with committing an act of sexual assault by inserting his finger into the genital of VVV under the second paragraph of Article 266-A. Indeed, two instances of rape were proven at the trial. *First*, it was established that Armando inserted his penis into the private part of his victim, VVV. *Second*, through the testimony of VVV, it was proven that Armando also inserted his finger in VVV's private part.

The Information has sufficiently informed accused-appellant that he is being charged with two counts of rape. Although two offenses were charged, which is a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states that "[a] complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Nonetheless, Section 3, Rule 120 of the Revised Rules of Criminal Procedure also states that "[w]hen two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." Consequently, since Armando failed to file a motion to quash the Information, he can be convicted with two counts of rape.

VICENTE FOZ, JR. and DANNY G. FAJARDO, *Petitioners*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 167764, THIRD DIVISION, October 9, 2009, PERALTA, *J.*

Venue in criminal cases is an essential element of jurisdiction. The Court held in Macasaet v. People that:

> *It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense all committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore,* ***the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.*** *However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.*

The allegations in the Information that "Panay News, a daily publication with a considerable circulation in the City of Iloilo and throughout the region" only showed that Iloilo was the place where Panay News was in considerable circulation but did not establish that the said publication was printed and first published in Iloilo City.

Settled is the rule that jurisdiction of a court over a criminal case is determined by the allegations of the complaint or information, and the offense must have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Considering that the Information failed to allege the venue requirements for a libel case under Article 360, the Court finds that the RTC of Iloilo City had no jurisdiction to hear this case. Thus, its decision convicting petitioners of the crime of libel should be set aside for want of jurisdiction without prejudice to its filing with the court of competent jurisdiction.

FACTS:

In an Information dated October 17, 1994 filed before the RTC of Iloilo City, petitioners Vicente Foz, Jr. and Danny G. Fajardo were charged with the crime of libel.

Upon being arraigned on March 1, 1995, petitioners, assisted by counsel *de parte*, pleaded not guilty to the crime charged in the Information. Trial thereafter ensued.

On December 4, 1997, the RTC rendered its Decision finding petitioners guilty as charged.

Petitioners' motion for reconsideration was denied in an Order dated February 20, 1998.

Dissatisfied, petitioners filed an appeal with the CA.

On November 24, 2004, the CA rendered its assailed Decision which affirmed *in toto* the RTC decision.

Petitioners filed a motion for reconsideration, which the CA denied in a Resolution dated April 8, 2005.

ISSUE:

Whether or not the RTC of Iloilo City, Branch 23, had jurisdiction over the offense of libel as charged in the Information dated October 17, 1994. (NO)

RULING:

The Court notes that petitioners raised for the first time the issue of the RTC's jurisdiction over the offense charged only in their Reply filed before this Court and finds that petitioners are not precluded from doing so.

In *Fukuzume v. People*, the Court ruled:

It is noted that it was only in his petition with the CA that Fukuzume raised the issue of the trial court's jurisdiction over the offense charged. Nonetheless, the rule is settled that an objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered motu proprio by the court at any stage of the proceedings or on appeal. Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law. While an exception to this rule was recognized by this Court beginning with the landmark case of *Tijam vs. Sibonghanoy*, wherein the defense of lack of jurisdiction by the court which rendered the questioned ruling was considered to be barred by laches, we find that the factual circumstances involved in said case, a civil case, which justified the departure from the general rule are not present in the instant criminal case.

The Court finds merit in the petition.

Venue in criminal cases is an essential element of jurisdiction. The Court held in *Macasaet v. People* that:

It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, **the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.** However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction. (Emphasis supplied.)

Article 360 of the Revised Penal Code, as amended by Republic Act No. 4363, provides the specific rules as to the venue in cases of written defamation, to wit:

Article 360. Persons responsible.—Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The criminal action and civil action for damages in cases of written defamations, as provided for in this chapter shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published **or where any of the offended parties actually resides at the time of the commission of the offense:** Provided, however, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published x x x. (Emphasis supplied.)

In *Agbayani v. Sayo*, the rules on venue in Article 360 were restated as follows:

> 1. Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.
>
> 2. If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense.

3. If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila.

4. If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.

Applying the foregoing law to this case, since Dr. Portigo is a private individual at the time of the publication of the alleged libelous article, the venue of the libel case may be in the province or city where the libelous article was printed and first published, or in the province where Dr. Portigo actually resided at the time of the commission of the offense.

The allegations in the Information that "*Panay News*, a daily publication with a considerable circulation in the City of Iloilo and throughout the region" only showed that Iloilo was the place where *Panay News* was in considerable circulation but did not establish that the said publication was printed and first published in Iloilo City.

Article 360 of the Revised Penal Code as amended provides that a private individual may also file the libel case in the RTC of the province where he actually resided at the time of the commission of the offense. The Information filed against petitioners failed to allege the residence of Dr. Portigo. While the Information alleges that "Dr. Edgar Portigo is a physician and medical practitioner in Iloilo City," such allegation did not clearly and positively indicate that he was actually residing in Iloilo City at the time of the commission of the offense. It is possible that Dr. Portigo was actually residing in another place.

Settled is the rule that jurisdiction of a court over a criminal case is determined by the allegations of the complaint or information, and the offense must have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Considering that the Information failed to allege the venue requirements for a libel case under Article 360, the Court finds that the RTC of Iloilo City had no jurisdiction to hear this case. Thus, its decision convicting petitioners of the crime of libel should be set aside for want of jurisdiction without prejudice to its filing with the court of competent jurisdiction.

MARY ROSE A. BOTO, ***Complainant***, **v. SENIOR ASSISTANT CITY PROSECUTOR VINCENT L. VILLENA, CITY PROSECUTOR ARCHIMEDES V. MANABAT AND ASSISTANT CITY PROSECUTOR PATRICK NOEL P. DE DIOS, *Respondents*.**
A.C. No. 9684, THIRD DIVISION, September 18, 2013, MENDOZA, *J.*

Article 360 of the Revised Penal Code (RPC) explicitly provides that jurisdiction over libel cases are lodged with the RTC. The criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the RTC of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense. Jurisprudence is replete with decisions on the exclusive jurisdiction of the RTC to hear and try libel cases. In fact, the language of the law cannot be any clearer; its meaning is free from doubt. All that is required is application.

As a responsible public servant, a prosecutor's primary duty is not to simply convict but to see that justice is done. He is obliged to perform his duties fairly, consistently and expeditiously, and respect and protect

human dignity and uphold human rights in contributing to ensuring due process and the smooth functioning of the criminal justice system. As such, he should not initiate or continue prosecution, or shall make every effort to stay the proceedings when it is apparent that the court has no jurisdiction over the case. This is where Villena failed.

FACTS:

This administrative matter stemmed from an information for Libel against complainant Mary Rose A. Boto (*Boto*) filed before the Metropolitan Trial Court, Branch LXXIV, Taguig City (*MeTC*). The information was prepared by Assistant City Prosecutor Patrick Noel P. De Dios (*De Dios*), the investigating prosecutor; and approved by City Prosecutor Archimedes Manabat (*Manabat*). Senior Assistant City Prosecutor Vincent Villena (*Villena*) was the trial prosecutor assigned to Branch LXXIV.

In her Complaint-Affidavit,Boto charged respondents Villena, Manabat and De Dios with gross ignorance of the law for filing the information for libel before the MeTC and for opposing the motion to quash despite the knowledge that the said first level court had no jurisdiction over the case.

Boto alleged that on January 13, 2012, the Information charging her with libel was filed before the MeTC; that on the same day, the MeTC issued a warrant for her arrest; that on January 25, 2012, she posted bail and was informed that the arraignment and trial were scheduled on February 13, 2012; that before the scheduled arraignment, she filed the Motion to Quash the information on the ground of lack of jurisdiction as the crime of libel falls within, the exclusive jurisdiction of the Regional Trial Court (*RTC*) and not with the MeTC and that there was no crime as internet libel; that acting thereon, the MeTC, instead of dismissing the case, issued the Order requiring the trial prosecutor to file his comment within ten (10) days and resetting the arraignment to April 13, 2012; that despite the lapse of the period granted, Villena failed to file the required comment within the period prompting the MeTC to extend the filing of the same and reset the hearing on June 27, 2012, thereby, delaying the process by five (5) months; that the delay violated her constitutional right to a speedy trial; and that in his Comment filed before the MeTC, Villena opposed the motion to quash and contended that "the court had already determined probable cause when it issued the warrant of arrest, thus, it has *effectively mooted the resolution of any issue concerning jurisdiction*, venue and sufficiency of evidence against the complainant."

Boto further averred that she had previously filed a libel case against one George Tizon (*Tizon*) and others, but the said case was dismissed by Villena without conducting an investigation; that Tizon was the Administrative Officer V of the Department of Education Division, Taguig City, and the "godson" of Hon. Senator Allan Peter Cayetano, spouse of Taguig City Mayor, Lani Cayetano; that she received the resolution of the case only in January 2012 after the period to appeal had lapsed; that, however, when Tizon filed a complaint for libel against her, his complaint was immediately acted upon by the Taguig City prosecutors; and that so much interest was shown in the case, from its filing to the issuance of the warrant of arrest on the same day the case was filed before the MeTC.

Boto added that Manabat, De Dios, and Villena had all been practicing law for quite a number of years and it would be impossible for them not to know that the crime of libel falls within the jurisdiction of the RTC. She asserted that the respondents were all ignorant of the law, whose incompetence was a disgrace not only to the Department of Justice but to the legal profession as a whole.

The records further disclose that on October 17, 2012, the Information was properly filed with the RTC, Taguig City.

ISSUE:

Whether or not respondents Villena, Manabat and De Dios are guilty with gross ignorance of the law for filing the information for libel before the MeTC and for opposing the motion to quash despite the knowledge that the said first level court had no jurisdiction over the case. (YES)

RULING:

The Court finds that Boto has valid reasons to file this complaint against the respondents who, being prosecutors, are members of the bar and officers of the court.

Article 360 of the Revised Penal Code (*RPC*) explicitly provides that jurisdiction over libel cases are lodged with the RTC. The criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the RTC of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense. Jurisprudence is replete with decisions on the exclusive jurisdiction of the RTC to hear and try libel cases. In fact, the language of the law cannot be any clearer; its meaning is free from doubt. All that is required is application.

De Dios candidly admitted that inadvertence attended the filing of the information for libel with the MeTC. He did not, however, proffer any justification or explanation for the error. He did not claim that the mistake was either typographical or was a result of the application of a default form or template. In the Court's view, it was plain carelessness. As no malice can be attributed, he merely deserves a reprimand.

Manabat, on the other hand, should have been more cautious and careful in reviewing the report and recommendation of his subordinate. He should not have approved the information and its filing in the wrong court considering that his office was very knowledgeable of the law that jurisdiction in libel cases lies with the RTC. In fact, he cited several libel cases which his office filed with the proper court. As the head of office, he should be admonished to be more careful as his office is in the forefront in the administration of criminal justice.

While De Dios and Manabat can validly claim inadvertence, Villena cannot invoke the same defense in his handling of the case. Indeed, he did not file the information with the MeTC as he was not the investigating prosecutor, but merely the trial prosecutor. He, however, mishandled the case which prejudiced the complainant.

When the motion to quash was filed by Boto for lack of jurisdiction, Villena should have immediately acted on it by not opposing the dismissal of the case. The records disclose that in his Comment, Villena prayed that the motion to quash be DENIED. His Comment reads: chanroblesvirtualawlibrary
The undersigned prosecutor respectfully states that:

xxx

2. As to the first three (3) grounds relied upon by the accused, the Honorable Court had already determined probable cause when it issued a warrant of arrest against the accused. Thus, *it has effectively mooted the resolution of any issue concerning jurisdiction*, venue and sufficiency of evidence against the accused.

xxx

Patently, this responsive pleading of Villena demonstrates that he did not know the elementary rules on jurisdiction. Fundamental is the rule that jurisdiction is conferred by law and is not within the courts, let alone the parties themselves, to determine or conveniently set aside. It cannot be waived except for those judicially recognizable grounds like estoppel. And it is not mooted by an action of a court in an erroneously filed case. It has been held in a plethora of cases that when the law or procedure is so elementary, not to know, or to act as if one does not know it, constitutes gross ignorance of the law, even without the complainant having to prove malice or bad faith.

Villena should have even initiated the move for the dismissal of the case on the ground of lack of jurisdiction. Instead of taking the initiative, he even opposed the motion to quash the information. At any rate, respondents are not barred from refiling the case before the proper court if probable cause to hold the complainant liable really exists. His dismal failure to apply the basic rule on jurisdiction amounts to ignorance of the law and reflects his lack of prudence, if not his incompetence, in the performance of his duties.

Moreover, by not immediately filing a comment, he cannot blame the complainant for claiming that her right to a speedy trial was violated. It cannot be argued that no prejudice was caused against her because the error was immediately corrected and the information was properly filed with the RTC. Boto was adversely affected not because the MeTC immediately issued a warrant for her arrest, but because the prosecution of the case, meritorious or not, was considerably delayed. The Court takes judicial notice that proceedings at the first level courts, especially in cities and capital towns, are relatively slower than those at the RTC because of its more numerous pending cases.

As a responsible public servant, a prosecutor's primary duty is not to simply convict but to see that justice is done.He is obliged to perform his duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights in contributing to ensuring due process and the smooth functioning of the criminal justice system.As such, he should not initiate or continue prosecution, or shall make every effort to stay the proceedings when it is apparent that the court has no jurisdiction over the case. This is where Villena failed.

As lawyers, the respondents are officers of the court with the duty to uphold its dignity and authority and not promote distrust in the administration of justice.No less than the Code of Professional Responsibility mandates all lawyers to exert every effort to assist in the speedy and efficient administration of justice.

HECTOR TREÑAS, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G. R. No. 195002, SECOND DIVISION, January 25, 2012, SERENO, *J*.

Where life or liberty is affected by its proceedings, courts must keep strictly within the limits of the law authorizing them to take jurisdiction and to try the case and render judgment thereon.

The rule is settled that an objection may be raised based on the ground that the court lacks jurisdiction over the offense charged, or it may be considered motu proprio by the court at any stage of the proceedings or on appeal.Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise. That jurisdiction is conferred

by the sovereign authority that organized the court and is given only by law in the manner and form prescribed by law.

It has been consistently held by this Court that it is unfair to require a defendant or accused to undergo the ordeal and expense of a trial if the court has no jurisdiction over the subject matter or offense or it is not the court of proper venue.Section 15 (a) of Rule 110 of the Revised Rules on Criminal Procedure of 2000 provides that "[s]ubject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred." This fundamental principle is to ensure that the defendant is not compelled to move to, and appear in, a different court from that of the province where the crime was committed as it would cause him great inconvenience in looking for his witnesses and other evidence in another place.This principle echoes more strongly in this case, where, due to distance constraints, coupled with his advanced age and failing health, petitioner was unable to present his defense in the charges against him.

FACTS:

Sometime in December 1999, Margarita Alocilja (Margarita) wanted to buy a house-and-lot in Iloilo City covered by TCT No. 109266. It was then mortgaged with Maybank. The bank manager Joselito Palma recommended the appellant Hector Treñas (Hector) to private complainant Elizabeth, who was an employee and niece of Margarita, for advice regarding the transfer of the title in the latter's name. Hector informed Elizabeth that for the titling of the property in the name of her aunt Margarita, the following expenses would be incurred:

P20,000.00- Attorney's fees,
P90,000.00- Capital Gains Tax,
P24,000.00- Documentary Stamp,
P10,000.00- Miscellaneous Expenses.

Thereafter, Elizabeth gave P150,000.00 to Hector who issued a corresponding receipt dated December 22, 1999 and prepared [a] Deed of Sale with Assumption of Mortgage. Subsequently, Hector gave Elizabeth Revenue Official Receipt Nos. 00084370 for P96,000.00 and 00084369 for P24,000.00. However, when she consulted with the BIR, she was informed that the receipts were fake. When confronted, Hector admitted to her that the receipts were fake and that he used the P120,000.00 for his other transactions. Elizabeth demanded the return of the money.

To settle his accounts, appellant Hector issued in favor of Elizabeth a Bank of Commerce check No. 0042856 dated November 10, 2000 in the amount of P120,000.00, deducting from P150,000.00 the P30,000.00 as attorney's fees. When the check was deposited with the PCIBank, Makati Branch, the same was dishonored for the reason that the account was closed. Notwithstanding repeated formal and verbal demands, appellant failed to pay. Thus, the instant case of Estafa was filed against him.

On 29 October 2001, an Information was filed by the Office of the City Prosecutor before the Regional Trial Court (RTC), both of Makati City.

During arraignment on 26 April 2002, petitioner, acting as his own counsel, entered a plea of "Not Guilty." Allegedly due to old age and poor health, and the fact that he lives in Iloilo City, petitioner was unable to attend the pre-trial and trial of the case.

On 8 January 2007, the RTC rendered a Decisionfinding petitioner guilty of the crime of Estafa under section 1, paragraph (b), of Article 315 of the Revised Penal Code (RPC).

On 24 August 2007, petitioner filed a Motion for Reconsideration,which was denied by the RTC in a Resolution dated 2 July 2008.

On 25 September 2008, petitioner filed a Notice of Appeal before the RTC.The appeal was docketed as CA-G.R. CR No. 32177. On 9 July 2010, the CA rendered a Decision affirming that of the RTC. On 4 August 2010, petitioner filed a Motion for Reconsideration, which was denied by the CA in a Resolution dated 4 January 2011.

ISSUE:

Whether or not the Court of Appeals erred in ruling that an accused has to present evidence in support of the defense of lack of jurisdiction even if such lack of jurisdiction appears in the evidence of the prosecution. (YES)

RULING:

On the first issue, petitioner asserts that nowhere in the evidence presented by the prosecution does it show that P150,000 was given to and received by petitioner in Makati City. Instead, the evidence shows that the Receipt issued by petitioner for the money was dated 22 December 1999, without any indication of the place where it was issued. Meanwhile, the Deed of Sale with Assumption of Mortgage prepared by petitioner was signed and notarized in Iloilo City, also on 22 December 1999. Petitioner claims that the only logical conclusion is that the money was actually delivered to him in Iloilo City, especially since his residence and office were situated there as well. Absent any direct proof as to the place of delivery, one must rely on the disputable presumption that things happened according to the ordinary course of nature and the ordinary habits of life. The only time Makati City was mentioned was with respect to the time when the check provided by petitioner was dishonored by Equitable-PCI Bank in its De la Rosa-Rada Branch in Makati. Petitioner asserts that the prosecution witness failed to allege that any of the acts material to the crime of *estafa* had occurred in Makati City. Thus, the trial court failed to acquire jurisdiction over the case.

Petitioner thus argues that an accused is not required to present evidence to prove lack of jurisdiction, when such lack is already indicated in the prosecution evidence.

In this case, the findings of fact of the trial court and the CA on the issue of the place of commission of the offense are conclusions without any citation of the specific evidence on which they are based; they are grounded on conclusions and conjectures.

The trial court, in its Decision, ruled on the commission of the offense without any finding as to where it was committed.

In his Motion for Reconsideration before the RTC, petitioner raised the argument that it had no jurisdiction over the offense charged. The trial court denied the motion, without citing any specific evidence upon which its findings were based, and by relying on conjecture.

The instant case is thus an exception allowing a review of the factual findings of the lower courts.

The overarching consideration in this case is the principle that, in criminal cases, venue is jurisdictional. A court cannot exercise jurisdiction over a person charged with an offense committed outside its limited territory. In *Isip v. People*, this Court explained:

The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, **the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information**. And once it is so shown, the court may validly take cognizance of the case. **However, if the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction**. (Emphasis supplied.)

In a criminal case, the prosecution must not only prove that the offense was committed, it must also prove the identity of the accused and the fact that the offense was committed within the jurisdiction of the court.

In this case, the prosecution failed to show that the offense of *estafa* under Section 1, paragraph (b) of Article 315 of the RPC was committed within the jurisdiction of the RTC of Makati City.

That the offense was committed in Makati City was alleged in the information as follows:

That on or about the 23rd day of December, 1999, **in the City of Makati**, Metro Manila, Philippines and **within the jurisdiction of this Honorable Court**, the above-named accused, received in trust from ELIZABETH LUCIAJA the amount of P150,000.00 x x x. (Emphasis supplied.)

Ordinarily, this statement would have been sufficient to vest jurisdiction in the RTC of Makati. However, the Affidavit of Complaint executed by Elizabeth does not contain any allegation as to where the offense was committed.

Aside from the lone allegation in the Information, no other evidence was presented by the prosecution to prove that the offense or any of its elements was committed in Makati City.

Under Article 315, par. 1 (b) of the RPC, the elements of *estafa* are as follows: (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (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) there is demand by the offended party to the offender.

There is nothing in the documentary evidence offered by the prosecutionthat points to where the offense, or any of its elements, was committed. A review of the testimony of Elizabeth also shows that there was no mention of the place where the offense was allegedly committed.

Although the prosecution alleged that the check issued by petitioner was dishonored in a bank in Makati, such dishonor is not an element of the offense of *estafa* under Article 315, par. 1 (b) of the RPC.

Indeed, other than the lone allegation in the information, there is nothing in the prosecution evidence which even mentions that any of the elements of the offense were committed in Makati. The rule is settled that an objection may be raised based on the ground that the court lacks jurisdiction over the offense charged, or it may be considered *motu proprio* by the court at any stage of the proceedings or on appeal.Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise. That jurisdiction is conferred by the sovereign authority that organized the court and is given only by law in the manner and form prescribed by law.

It has been consistently held by this Court that it is unfair to require a defendant or accused to undergo the ordeal and expense of a trial if the court has no jurisdiction over the subject matter or offense or it is not the court of proper venue.Section 15 (a) of Rule 110 of the Revised Rules on Criminal Procedure of 2000 provides that "[s]ubject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred." This fundamental principle is to ensure that the defendant is not compelled to move to, and appear in, a different court from that of the province where the crime was committed as it would cause him great inconvenience in looking for his witnesses and other evidence in another place.This principle echoes more strongly in this case, where, due to distance constraints, coupled with his advanced age and failing health, petitioner was unable to present his defense in the charges against him.

There being no showing that the offense was committed within Makati, the RTC of that city has no jurisdiction over the case.

LEE PUE LIONG A.K.A. PAUL LEE, *Petitioner*, v. CHUA PUE CHIN LEE, *Respondent*.
G.R. No. 181658, FIRST DIVISION, August 07, 2013, VILLARAMA, JR., *J.*

For the recovery of civil liability in the criminal action, the appearance of a private prosecutor is allowed under Section 16 of Rule 110:

SEC. 16. Intervention of the offended party in criminal action.—Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, ***the offended party may intervene by counsel*** *in the prosecution of the offense. (Emphasis supplied.)*

In the light of the foregoing, we hold that the CA did not err in holding that the MeTC committed no grave abuse of discretion when it denied petitioner's motion to exclude Atty. Macam as private prosecutor in Crim. Case Nos. 352270-71 CR.

FACTS:

Petitioner Lee Pue Liong, a.k.a. Paul Lee, is the President of Centillion Holdings, Inc. (CHI), a company affiliated with the CKC Group of Companies (CKC Group) which includes the pioneer company Clothman Knitting Corporation (CKC). The CKC Group is the subject of intra-corporate disputes between petitioner and his siblings, including herein respondent Chua Pue Chin Lee, a majority stockholder and Treasurer of CHI.

On July 19, 1999, petitioner's siblings including respondent and some unidentified persons took over and barricaded themselves inside the premises of a factory owned by CKC. Petitioner and other factory employees were unable to enter the factory premises. This incident led to the filing of Criminal Case Nos. 971-V-99, 55503 to 55505 against Nixon Lee and 972-V-99 against Nixon Lee, Andy Lee, Chua Kipsi a.k.a. Jensen Chua and respondent, which are now pending in different courts in Valenzuela City.

On June 14, 1999, petitioner on behalf of CHI (as per the Secretary's Certificate issued by Virginia Lee on even date) caused the filing of a verified Petition for the Issuance of an Owner's Duplicate Copy of Transfer Certificate of Title (TCT) No. 23223 which covers a property owned by CHI. The case was docketed as LRC Record No. 4004 of the Regional Trial Court (RTC) of Manila, Branch 4. Petitioner submitted before the said court an Affidavit of Loss stating.

Respondent, joined by her brother Nixon Lee, filed an Omnibus Motion praying, among others, that the September 17, 1999 Order be set aside claiming that petitioner knew fully well that respondent was in possession of the said Owner's Duplicate Copy, the latter being the Corporate Treasurer and custodian of vital documents of CHI. Respondent added that petitioner merely needs to have another copy of the title because he planned to mortgage the same with the Planters Development Bank. Respondent even produced the Owner's Duplicate Copy of TCT No. 232238 in open court. Thus, on November 12, 1999, the RTC recalled and set aside its September 17, 1999 Order.

In a Complaint-Affidavit dated May 9, 2000 filed before the City Prosecutor of Manila, respondent alleged the following:
x x x x

7. *Paul Lee made a willful and deliberate assertion of falsehood in his verified petition, affidavit and testimony, as he perfectly knew that I was in possession of the owner's duplicate copy of TCT No. 232238.*

x x x x

On June 7, 2000, respondent executed a Supplemental Affidavit to clarify that she was accusing petitioner of perjury allegedly committed on the following occasions: (1) by declaring in the VERIFICATION the veracity of the contents in his petition filed with the RTC of Manila concerning his claim that TCT No. 232238 was in his possession but was lost; (2) by declaring under oath in his affidavit of loss that said TCT was lost; and (3) by testifying under oath that the said TCT was inadvertently lost from his files.

At the trial, Atty. Augusto M. Macam appeared as counsel for respondent and as private prosecutor with the consent and under the control and supervision of the public prosecutor. After the prosecution's presentation of its first witness in the person of Atty. Ronaldo Viesca, Jr., a lawyer from

the Land Registration Authority, petitioner's counsel moved in open court that respondent and her lawyer in this case should be excluded from participating in the case since perjury is a public offense. Said motion was vehemently opposed by Atty. Macam. In its Order dated May 7, 2003, the MeTC gave both the defense and the prosecution the opportunity to submit their motion and comment respectively as regards the issue raised by petitioner's counsel.

Complying with the MeTC's directive, petitioner filed the aforementioned Omnibus Motion asserting that in the crime of perjury punishable under Article 183 of the Revised Penal Code, as amended, there is no mention of any private offended party. As such, a private prosecutor cannot intervene for the prosecution in this case. Petitioner argued that perjury is a crime against public interest as provided under Section 2, Chapter 2, Title IV, Book 2 of the Revised Penal Code, as amended, where the offended party is the State alone. Petitioner posited that there being no allegation of damage to private interests, a private prosecutor is not needed. On the other hand, the Prosecution filed its Opposition to petitioner's Omnibus Motion.

The MeTC denied the Omnibus Motion in the Order dated August 15, 2003.

The MeTC also denied petitioner's motion for reconsideration.

Petitioner sought relief from the CA via a petition for *certiorari* with a prayer for the issuance of a writ of preliminary injunction and temporary restraining order.

By Decision dated May 31, 2007, the CA ruled in favor of respondent, holding that the presence of the private prosecutor who was under the control and supervision of the public prosecutor during the criminal proceedings of the two perjury cases is not proscribed by the rules.

ISSUE:

Whether or not the Honorable Court of Appeals erred when it upheld the resolutions of the *lower court* which in turn upheld the right of respondent, an alleged stockholder of Chi, to intervene in the criminal case for perjury as private complainant on behalf of the corporation without its authority. (NO)

RULING:

Petitioner claims that the crime of perjury, a crime against public interest, does not offend any private party but is a crime which only offends the public interest in the fair and orderly administration of laws. He opines that perjury is a felony where no civil liability arises on the part of the offender because there are no damages to be compensated and that there is no private person injured by the crime.

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "*[e]very person criminally liable x x x is also civilly liable*."[42] Underlying this legal principle is the traditional theory that when a person commits a crime, he offends two entities, namely (1) the society in which he lives in or the political entity, called the State, whose law he has violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission.

Section 1, Rule 111 of the Revised Rules of Criminal Procedure, as amended, provides:

SECTION 1. *Institution of criminal and civil actions*.—(a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged **shall be deemed instituted with the criminal action** unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

x x x x (Emphasis supplied)

For the recovery of civil liability in the criminal action, the appearance of a private prosecutor is allowed under Section 16 of Rule 110:

SEC. 16. *Intervention of the offended party in criminal action*.—Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, **the offended party may intervene by counsel** in the prosecution of the offense. (Emphasis supplied.)

Section 12, Rule 110 of the Revised Rules of Criminal Procedure, as amended, defines an offended party as "the person against whom or against whose property the offense was committed." In *Garcia v. Court of Appeals*, this Court rejected petitioner's theory that it is only the State which is the offended party in public offenses like bigamy. We explained that from the language of Section 12, Rule 10 of the Rules of Court, it is reasonable to assume that the offended party in the commission of a crime, public or private, is the party to whom the offender is civilly liable, and therefore the private individual to whom the offender is civilly liable is the offended party.

In *Ramiscal, Jr. v. Hon. Sandiganbayan*,we also held that:

Under Section 16, Rule 110 of the Revised Rules of Criminal Procedure, **the offended party may also be a private individual whose person, right, house, liberty or property was *actually* or *directly* injured by the same punishable act or omission of the accused, or that corporate entity which is damaged or injured by the delictual acts complained of**. Such party must be one who has a legal right; a substantial interest in the subject matter of the action as will entitle him to recourse under the substantive law, to recourse if the evidence is sufficient or that he has the legal right to the demand and the accused will be protected by the satisfaction of his civil liabilities. Such interest must not be a mere expectancy, subordinate or inconsequential. The interest of the party must be personal; and not one based on a desire to vindicate the constitutional right of some third and unrelated party.(Emphasis supplied.)

In this case, the statement of petitioner regarding his custody of TCT No. 232238 covering CHI's property and its loss through inadvertence, if found to be perjured is, without doubt, injurious to respondent's personal credibility and reputation insofar as her faithful performance of the duties and responsibilities of a Board Member and Treasurer of CHI. The potential injury to the corporation itself is likewise undeniable as the court-ordered issuance of a new owner's duplicate of TCT No. 232238 was only averted by respondent's timely discovery of the case filed by petitioner in the RTC.

Even assuming that no civil liability was alleged or proved in the perjury case being tried in the MeTC, this Court declared in the early case of *Lim Tek Goan v. Yatco*, cited by both MeTC and CA, that whether public or private crimes are involved, it is erroneous for the trial court to consider the intervention of the offended party by counsel as merely a matter of tolerance. Thus, where the private prosecution has asserted its right to intervene in the proceedings, that right must be respected. The right reserved by the Rules to the offended party is that of intervening for the sole purpose of enforcing the civil

liability born of the criminal act and not of demanding punishment of the accused. Such intervention, moreover, is always subject to the direction and control of the public prosecutor.

In *Chua v. Court of Appeals*:

Petitioner's contention lacks merit. Generally, the basis of civil liability arising from crime is the fundamental postulate that every man criminally liable is also civilly liable. When a person commits a crime he offends two entities namely (1) the society in which he lives in or the political entity called the State whose law he has violated; and (2) the individual member of the society whose person, right, honor, chastity or property has been actually or directly injured or damaged by the same punishable act or omission. **An act or omission is felonious because it is punishable by law, it gives rise to civil liability not so much because it is a crime but because it caused damage to another.** Additionally, what gives rise to the civil liability is really the obligation and the moral duty of everyone to repair or make whole the damage caused to another by reason of his own act or omission, whether done intentionally or negligently. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of the crime. The civil action involves the civil liability arising from the offense charged which includes restitution, reparation of the damage caused, and indemnification for consequential damages.

Under the Rules, where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense. Rule 111(a) of the Rules of Criminal Procedure provides that, "[w]hen a criminal action is instituted, the civil action arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action."

Private respondent did not waive the civil action, nor did she reserve the right to institute it separately, nor institute the civil action for damages arising from the offense charged. Thus, we find that the private prosecutors can intervene in the trial of the criminal action.

Petitioner avers, however, that respondent's testimony in the inferior court did not establish nor prove any damages personally sustained by her as a result of petitioner's alleged acts of falsification. **Petitioner adds that since no personal damages were proven therein, then the participation of her counsel as private prosecutors, who were supposed to pursue the civil aspect of a criminal case, is not necessary and is without basis.**

When the civil action is instituted with the criminal action, evidence should be taken of the damages claimed and the court should determine who are the persons entitled to such indemnity. The civil liability arising from the crime may be determined in the criminal proceedings if the offended party does not waive to have it adjudged or does not reserve the right to institute a separate civil action against the defendant. Accordingly, **if there is no waiver or reservation of civil liability, evidence should be allowed to establish the extent of injuries suffered**.

In the case before us, there was neither a waiver nor a reservation made; nor did the offended party institute a separate civil action. It follows that **evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed, and the private offended party has the right to intervene through the private prosecutors**.[50] (Emphasis supplied)

In the light of the foregoing, we hold that the CA did not err in holding that the MeTC committed no grave abuse of discretion when it denied petitioner's motion to exclude Atty. Macam as private prosecutor in Crim. Case Nos. 352270-71 CR.

EDUARDO G. RICARZE, *Petitioner*, -versus- COURT OF APPEALS, PEOPLE OF THE PHILIPPINES, CALTEX PHILIPPINES, INC., PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK (PCIBANK), *Respondents*.
G.R. No. 160451, THIRD DIVISION, February 9, 2007, CALLEJO, SR., *J.*

Under Section 5, Rule 110of the Revised Rules of Rules, all criminal actions covered by a complaint or information shall be prosecuted under the direct supervision and control of the public prosecutor. Thus, even if the felonies or delictual acts of the accused result in damage or injury to another, the civil action for the recovery of civil liability based on the said criminal acts is impliedly instituted, and the offended party has not waived the civil action, reserved the right to institute it separately or instituted the civil action prior to the criminal action, the prosecution of the action (including the civil) remains under the control and supervision of the public prosecutor. The prosecution of offenses is a public function. Under Section 16, Rule 110 of the Rules of Criminal Procedure, the offended party may intervene in the criminal action personally or by counsel, who will act as private prosecutor for the protection of his interests and in the interest of the speedy and inexpensive administration of justice. A separate action for the purpose would only prove to be costly, burdensome and time-consuming for both parties and further delay the final disposition of the case. The multiplicity of suits must be avoided. With the implied institution of the civil action in the criminal action, the two actions are merged into one composite proceeding, with the criminal action predominating the civil. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order.

The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.

In the case at bar, the substitution of Caltex by PCIB as private complaint is not a substantial amendment. The substitution did not alter the basis of the charge in both Informations, nor did it result in any prejudice to petitioner. The documentary evidence in the form of the forged checks remained the same, and all such evidence was available to petitioner well before the trial. Thus, he cannot claim any surprise by virtue of the substitution.

FACTS:

Petitioner Eduardo G. Ricarze was employed as a collector-messenger by City Service Corporation, a domestic corporation engaged in messengerial services. He was assigned to the main office of Caltex Philippines, Inc. (Caltex) in Makati City. His primary task was to collect checks payable to Caltex and deliver them to the cashier. He also delivered invoices to Caltex's customers.

On November 6, 1997, Caltex, through its Banking and Insurance Department Manager Ramon Romano, filed a criminal complaint against petitioner before the Office of the City Prosecutor of Makati City for estafa through falsification of commercial documents. Romano alleged that, on

October 16, 1997, while his department was conducting a daily electronic report from Philippine Commercial & Industrial Bank (PCIB) Dela Rosa, Makati Branch, one of its depositary banks, it was discovered that unknown to the department, a company check, Check No. 74001 dated October 13, 1997 in the amount of ₱5,790,570.25 payable to Dante R. Gutierrez, had been cleared through PCIB on October 15, 1997. An investigation also revealed that two other checks (Check Nos. 73999 and 74000) were also missing and that in Check No. 74001, his signature and that of another signatory, Victor S. Goquinco, were forgeries. Another check, Check No. 72922 dated September 15, 1997 in the amount of ₱1,790,757.25 likewise payable to Dante R. Gutierrez, was also cleared through the same bank on September 24, 1997; this check was likewise not issued by Caltex, and the signatures appearing thereon had also been forged. Upon verification, it was uncovered that Check Nos. 74001 and 72922 were deposited at the Banco de Oro's SM Makati Branch under Savings Account No. S/A 2004-0047245-7, in the name of a regular customer of Caltex, Dante R. Gutierrez.

Gutierrez, however, disowned the savings account as well as his signatures on the dorsal portions thereof. He also denied having withdrawn any amount from said savings account. Further investigation revealed that said savings account had actually been opened by petitioner; the forged checks were deposited and endorsed by him under Gutierrez's name. A bank teller from the Banco de Oro, Winnie P. Donable Dela Cruz, positively identified petitioner as the person who opened the savings account using Gutierrez's name.

In the meantime, the PCIB credited the amount of ₱581,229.00 to Caltex on March 29, 1998. However, the City Prosecutor of Makati City was not informed of this development. After the requisite preliminary investigation, the City Prosecutor filed two (2) Informations for estafa through falsification of commercial documents on June 29, 1998 against petitioner before the Regional Trial Court (RTC) of Makati City, Branch 63.

Petitioner was arraigned on August 18, 1998, and pleaded not guilty to both charges.

On July 18, 2001, the RTC issued an Order granting the motion of the private prosecutor for the substitution of PCIB as private complainant for Caltex. It however denied petitioner's motion to have the formal offer of evidence of SRMO expunged from the record. Petitioner filed a motion for reconsideration which the RTC denied on November 14, 2001.

Petitioner filed a Petition for Certiorari under Rule 65 of the Rules of Court with Urgent Application for Temporary Restraining Order with the Court of Appeals (CA,).

On November 5, 2002, the appellate court rendered judgment dismissing the petition.

On October 17, 2003, the CA issued a Resolution denying petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration.

ISSUE:

Whether or not the substitution of Caltex by PCIB as private complainant is tantamount to a substantial amendment of the Informations which is prohibited under Section 14, Rule 110 of the Rules of Court. (NO)

RULING:

Under Section 5, Rule 110of the Revised Rules of Rules, all criminal actions covered by a complaint or information shall be prosecuted under the direct supervision and control of the public prosecutor. Thus, even if the felonies or delictual acts of the accused result in damage or injury to another, the civil action for the recovery of civil liability based on the said criminal acts is impliedly instituted, and the offended party has not waived the civil action, reserved the right to institute it separately or instituted the civil action prior to the criminal action, the prosecution of the action (including the civil) remains under the control and supervision of the public prosecutor. The prosecution of offenses is a public function. Under Section 16, Rule 110 of the Rules of Criminal Procedure, the offended party may intervene in the criminal action personally or by counsel, who will act as private prosecutor for the protection of his interests and in the interest of the speedy and inexpensive administration of justice. A separate action for the purpose would only prove to be costly, burdensome and time-consuming for both parties and further delay the final disposition of the case. The multiplicity of suits must be avoided. With the implied institution of the civil action in the criminal action, the two actions are merged into one composite proceeding, with the criminal action predominating the civil. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order.

On the other hand, the sole purpose of the civil action is for the resolution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the delictual or felonious act of the accused.

On the other hand, Section 14, Rule 110 of the Revised Rules of Criminal Procedure states:

Section 14. Amendment or substitution. – A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

Thus, before the accused enters his plea, a formal or substantial amendment of the complaint or information may be made without leave of court. After the entry of a plea, only a formal amendment may be made but with leave of court and if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed except if the same is beneficial to the accused.

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form. The following have been held to be mere formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; and (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts,

and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.

The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.

In the case at bar, the substitution of Caltex by PCIB as private complaint is not a substantial amendment. The substitution did not alter the basis of the charge in both Informations, nor did it result in any prejudice to petitioner. The documentary evidence in the form of the forged checks remained the same, and all such evidence was available to petitioner well before the trial. Thus, he cannot claim any surprise by virtue of the substitution.

FERDINAND A. CRUZ, *Petitioner*, -versus- ALBERTO MINA, HON. ELEUTERIO F. GUERRERO and HON. ZENAIDA LAGUILLES, *Respondents*.
G.R. No. 154207, THIRD DIVISION, April 27, 2007, AUSTRIA-MARTINEZ, *J.*

Under Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable except in instances when no actual damage results from an offense, such as espionage, violation of neutrality, flight to an enemy country, and crime against popular representation. The basic rule applies in the instant case, such that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The petitioner is correct in stating that there being no reservation, waiver, nor prior institution of the civil aspect in Criminal Case No. 00-1705, it follows that the civil aspect arising from Grave Threats is deemed instituted with the criminal action, and, hence, the private prosecutor may rightfully intervene to prosecute the civil aspect.

FACTS:

On September 25, 2000, Ferdinand A. Cruz (petitioner) filed before the MeTC a formal Entry of Appearance, as private prosecutor, in Criminal Case No. 00-1705 for Grave Threats, where his father, Mariano Cruz, is the complaining witness.

The petitioner, describing himself as a third year law student, justifies his appearance as private prosecutor on the bases of Section 34 of Rule 138 of the Rules of Court and the ruling of the Court En Banc in *Cantimbuhan v. Judge Cruz, Jr*. that a non-lawyer may appear before the inferior courts as an agent or friend of a party litigant. The petitioner furthermore avers that his appearance was with the prior conformity of the public prosecutor and a written authority of Mariano Cruz appointing him to be his agent in the prosecution of the said criminal case.

However, in an Order dated February 1, 2002, the MeTC denied permission for petitioner to appear as private prosecutor on the ground that Circular No. 19 governing limited law student practice in conjunction with Rule 138-A of the Rules of Court (Law Student Practice Rule) should take

precedence over the ruling of the Court laid down in *Cantimbuhan*; and set the case for continuation of trial.

On February 13, 2002, petitioner filed before the MeTC a Motion for Reconsideration.

In an Order dated March 4, 2002, the MeTC denied the Motion for Reconsideration.

On April 2, 2002, the petitioner filed before the RTC a Petition for Certiorari and Mandamus with Prayer for Preliminary Injunction and Temporary Restraining Order against the private respondent and the public respondent MeTC.

After hearing the prayer for preliminary injunction to restrain public respondent MeTC Judge from proceeding with Criminal Case No. 00-1705 pending the Certiorari proceedings, the RTC, in a Resolution dated May 3, 2002, resolved to deny the issuance of an injunctive writ on the ground that the crime of Grave Threats, the subject of Criminal Case No. 00-1705, is one that can be prosecuted de oficio, there being no claim for civil indemnity, and that therefore, the intervention of a private prosecutor is not legally tenable.

On May 9, 2002, the petitioner filed before the RTC a Motion for Reconsideration.

Pending the resolution of the foregoing Motion for Reconsideration before the RTC, the petitioner filed a Second Motion for Reconsideration dated June 7, 2002 with the MeTC seeking the reversal of the March 4, 2002 Denial Order of the said court, on the strength of Bar Matter No. 730, and a Motion to Hold In Abeyance the Trial dated June 10, 2002 of Criminal Case No. 00-1705 pending the outcome of the certiorari proceedings before the RTC.

On June 5, 2002, the RTC issued its Order denying the petitioner's Motion for Reconsideration.

Likewise, in an Order dated June 13, 2002, the MeTC denied the petitioner's Second Motion for Reconsideration and his Motion to Hold in Abeyance the Trial on the ground that the RTC had already denied the Entry of Appearance of petitioner before the MeTC.

ISSUE:

Whether or not the private prosecutor may rightfully intervene to prosecute the civil aspect. (YES)

RULING:

Petitioner argues that the RTC erroneously held that, by its very nature, no civil liability may flow from the crime of Grave Threats, and, for this reason, the intervention of a private prosecutor is not possible.

It is clear from the RTC Decision that no such conclusion had been intended by the RTC. In denying the issuance of the injunctive court, the RTC stated in its Decision that there was no claim for civil liability by the private complainant for damages, and that the records of the case do not provide for a claim for indemnity; and that therefore, petitioner's appearance as private prosecutor appears to be legally untenable.

Under Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable except in instances when no actual damage results from an offense, such as espionage, violation of neutrality, flight to an enemy country, and crime against popular representation. The basic rule applies in the instant case, such that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The petitioner is correct in stating that there being no reservation, waiver, nor prior institution of the civil aspect in Criminal Case No. 00-1705, it follows that the civil aspect arising from Grave Threats is deemed instituted with the criminal action, and, hence, the private prosecutor may rightfully intervene to prosecute the civil aspect.

HUN HYUNG PARK, *Petitioner*, -versus- EUNG WON CHOI, *Respondent*.
G.R. No. 165496, SECOND DIVISION, February 12, 2007, CARPIO MORALES, *J.*

As to the reason for the appellate court's dismissal of his petition – failure to implead the People of the Philippines as a party in the petition – indeed, as petitioner contends, the same is of no moment, he having appealed only the civil aspect of the case. Passing on the dual purpose of a criminal action, this Court ruled:

Unless the offended party waives the civil action or reserves the right to institute it separately or institutes the civil action prior to the criminal action, there are two actions involved in a criminal case. The first is the criminal action for the punishment of the offender. The parties are the People of the Philippines as the plaintiff and the accused. In a criminal action, the private complainant is merely a witness for the State on the criminal aspect of the action. The second is the civil action arising from the delict. The private complainant is the plaintiff and the accused is the defendant. There is a merger of the trial of the two cases to avoid multiplicity of suits. (Underscoring supplied)

It bears recalling that the MeTC acquitted respondent. As a rule, a judgment of acquittal is immediately final and executory and the prosecution cannot appeal the acquittal because of the constitutional prohibition against double jeopardy.

Either the offended party or the accused may, however, appeal the civil aspect of the judgment despite the acquittal of the accused. The public prosecutor has generally no interest in appealing the civil aspect of a decision acquitting the accused. The acquittal ends his work. The case is terminated as far as he is concerned. ***The real parties in interest in the civil aspect of a decision are the offended party and the accused.***

FACTS:

In an Information dated August 31, 2000, respondent, Eung Won Choi, was charged for violation of *Batas Pambansa Blg.* 22, otherwise known as the Bouncing Checks Law, for issuing on June 28, 1999 Philippine National Bank Check No. 0077133 postdated August 28, 1999 in the amount of ₱1,875,000 which was dishonored for having been drawn against insufficient funds.

Upon arraignment, respondent, with the assistance of counsel, pleaded "not guilty" to the offense charged. Following the pre-trial conference, the prosecution presented its evidence-in-chief.

After the prosecution rested its case, respondent filed a Motion for Leave of Court to File Demurrer to Evidence to which he attached his Demurrer, asserting that the prosecution failed to prove that he received the notice of dishonor, hence, the presumption of the element of knowledge of insufficiency of funds did not arise.
By Order of February 27, 2003, the Metropolitan Trial Court (MeTC) of Makati, Branch 65 granted the Demurrer and dismissed the case. The prosecution's Motion for Reconsideration was denied.

Petitioner appealed the civil aspect of the case to the Regional Trial Court (RTC) of Makati, contending that the dismissal of the criminal case should not include its civil aspect.

By Decision of September 11, 2003, Branch 60 of the RTC held that while the evidence presented was insufficient to prove respondent's criminal liability, it did not altogether extinguish his civil liability. It accordingly granted the appeal of petitioner and ordered respondent to pay him the amount of ₱1,875,000 with legal interest.

Upon respondent's motion for reconsideration, however, the RTC set aside its decision and ordered the remand of the case to the MeTC "for further proceedings, so that the defendant [-respondent herein] may adduce evidence on the civil aspect of the case." Petitioner's motion for reconsideration of the remand of the case having been denied, he elevated the case to the CA which, by the assailed resolutions, dismissed his petition.

ISSUE:

Whether or not the Court of Appeals erred in dismissing the petition because petitioners failed to implead the People of the Philippines as party-respondent in the petition. (YES)

RULING:

As to the reason for the appellate court's dismissal of his petition – failure to implead the People of the Philippines as a party in the petition – indeed, as petitioner contends, the same is of no moment, he having appealed only the civil aspect of the case. Passing on the dual purpose of a criminal action, this Court ruled:

Unless the offended party waives the civil action or reserves the right to institute it separately or institutes the civil action prior to the criminal action, there are two actions involved in a criminal case. The first is the criminal action for the punishment of the offender. The parties are the People of the Philippines as the plaintiff and the accused. In a criminal action, the private complainant is merely a witness for the State on the criminal aspect of the action. The second is the civil action arising from the delict. The private complainant is the plaintiff and the accused is the defendant. There is a merger of the trial of the two cases to avoid multiplicity of suits. (Underscoring supplied)

It bears recalling that the MeTC acquitted respondent. As a rule, a judgment of acquittal is immediately final and executory and the prosecution cannot appeal the acquittal because of the constitutional prohibition against double jeopardy.

Either the offended party or the accused may, however, appeal the civil aspect of the judgment despite the acquittal of the accused. The public prosecutor has generally no interest in appealing the civil aspect of a decision acquitting the accused. The acquittal ends his work. The case is terminated

as far as he is concerned. **The real parties in interest in the civil aspect of a decision are the offended party and the accused.**

Technicality aside, the petition is devoid of merit.
When a demurrer to evidence is filed *without leave of court*, the whole case is submitted for judgment on the basis of the evidence for the prosecution as the accused is deemed to have waived the right to present evidence. At that juncture, the court is called upon to decide the case including its civil aspect, unless the enforcement of the civil liability by a separate civil action has been waived or reserved.

If the filing of a separate civil action has not been reserved or priorly instituted or the enforcement of civil liability is not waived, the trial court should, in case of conviction, state the civil liability or damages caused by the wrongful act or omission to be recovered from the accused by the offended party, if there is any.

For, in case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the 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.

The civil action based on delict may, however, be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.

In case of a demurrer to evidence filed *with leave of court*, the accused may adduce countervailing evidence if the court denies the demurrer. Such denial bears no distinction as to the two aspects of the case because there is a disparity of evidentiary value between the quanta of evidence in such aspects of the case. In other words, a court may not deny the demurrer as to the criminal aspect and at the same time grant the demurrer as to the civil aspect, for if the evidence so far presented is not insufficient to prove the crime beyond reasonable doubt, then the same evidence is likewise not insufficient to establish civil liability by mere preponderance of evidence.

On the other hand, if the evidence so far presented is insufficient as proof beyond reasonable doubt, it does not follow that the same evidence is insufficient to establish a preponderance of evidence. For if the court grants the demurrer, proceedings on the civil aspect of the case generally proceeds. The only recognized instance when an acquittal on demurrer carries with it the dismissal of the civil aspect is when there is a finding that the act or omission from which the civil liability may arise did not exist. Absent such determination, trial as to the civil aspect of the case must perforce continue. Thus this Court, in *Salazar v. People*, held:

If demurrer is granted and the accused is acquitted by the court, the accused has the right to adduce evidence on the civil aspect of the case unless the court also declares that the act or omission from which the civil liability may arise did not exist.

In the instant case, the MeTC granted the demurrer and dismissed the case without any finding that the act or omission from which the civil liability may arise did not exist.

Respondent did not assail the RTC order of remand. He thereby recognized that there is basis for a remand.

PHILIPPINE RABBIT BUS LINES, INC., *Petitioner*, -versus-PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 147703, FIRST DIVISION, April 14, 2004, PANGANIBAN, *J.*

Only the civil liability of the accused arising from the crime charged is deemed impliedly instituted in a criminal action; that is, unless the offended party waives the civil action, reserves the right to institute it separately, or institutes it prior to the criminal action. Hence, the subsidiary civil liability of the employer under Article 103 of the Revised Penal Code may be enforced by execution on the basis of the judgment of conviction meted out to the employee.

The cases dealing with the subsidiary liability of employers uniformly declare that, strictly speaking, they are not parties to the criminal cases instituted against their employees. Although in substance and in effect, they have an interest therein, this fact should be viewed in the light of their subsidiary liability. While they may assist their employees to the extent of supplying the latter's lawyers, as in the present case, the former cannot act independently on their own behalf, but can only defend the accused.

FACTS:

On July 27, 1994, accused [Napoleon Roman y Macadangdang] was found guilty and convicted of the crime of reckless imprudence resulting to triple homicide, multiple physical injuries and damage to property and was sentenced to suffer the penalty of four (4) years, nine (9) months and eleven (11) days to six (6) years, and to pay damages to the heirs of Justino Torres, to the heirs of Estrella Velero, to the heirs of Lorna Ancheta, to Maureen Brennan, to Rosie Balajo, to Teresita Tamondong, to Juliana Tabtab, to Miguel Arquitola, to Clarita Cabanban, to Mariano Cabanban, and to La Union Electric Company as the registered owner of the Toyota Hi-Ace Van.

The court further ruled that [petitioner], in the event of the insolvency of accused, shall be liable for the civil liabilities of the accused. Evidently, the judgment against accused had become final and executory.

Admittedly, accused had jumped bail and remained at-large. It is worth mention[ing] that Section 8, Rule 124 of the Rules of Court authorizes the dismissal of appeal when appellant jumps bail. Counsel for accused, also admittedly hired and provided by [petitioner], filed a notice of appeal which was denied by the trial court. We affirmed the denial of the notice of appeal filed in behalf of accused.

Simultaneously, on August 6, 1994, [petitioner] filed its notice of appeal from the judgment of the trial court. On April 29, 1997, the trial court gave due course to [petitioner's] notice of appeal. On December 8, 1998, [petitioner] filed its brief. On December 9, 1998, the Office of the Solicitor General received [a] copy of [petitioner's] brief. On January 8, 1999, the OSG moved to be excused from filing [respondents'] brief on the ground that the OSG's authority to represent People is confined to criminal cases on appeal. The motion was however denied per Our resolution of May 31, 1999. On March 2, 1999, [respondent]/private prosecutor filed the instant motion to dismiss."

The CA ruled that the institution of a criminal case implied the institution also of the civil action arising from the offense. Thus, once determined in the criminal case against the accused-employee, the employer's subsidiary civil liability as set forth in Article 103 of the Revised Penal Code becomes conclusive and enforceable.

The appellate court further held that to allow an employer to dispute independently the civil liability fixed in the criminal case against the accused-employee would be to amend, nullify or defeat a final judgment. Since the notice of appeal filed by the accused had already been dismissed by the CA, then the judgment of conviction and the award of civil liability became final and executory. Included in the civil liability of the accused was the employer's subsidiary liability.

ISSUE:

Whether or not an employer, who dutifully participated in the defense of its accused-employee, may appeal the judgment of conviction independently of the accused. (NO)

RULING:

At the outset, we must explain that the 2000 Rules of Criminal Procedure has clarified what civil actions are deemed instituted in a criminal prosecution.

Section 1 of Rule 111 of the current Rules of Criminal Procedure provides:

> "When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.
>
> "x x x x x x x x x"

Only the civil liability of the accused arising from the crime charged is deemed impliedly instituted in a criminal action; that is, unless the offended party waives the civil action, reserves the right to institute it separately, or institutes it prior to the criminal action.Hence, the subsidiary civil liability of the employer under Article 103 of the Revised Penal Code may be enforced by execution on the basis of the judgment of conviction meted out to the employee.

It is clear that the 2000 Rules deleted the requirement of reserving independent civil actions and allowed these to proceed separately from criminal actions. Thus, the civil actions referred to in Articles 32, 33, 34 and 2176of the Civil Code shall remain "separate, distinct and independent" of any criminal prosecution based on the same act. Here are some direct consequences of such revision and omission:

> 1. The right to bring the foregoing actions based on the Civil Code need not be reserved in the criminal prosecution, since they are not deemed included therein.
>
> 2. The institution or the waiver of the right to file a separate civil action arising from the crime charged does not extinguish the right to bring such action.
>
> 3. The only limitation is that the offended party cannot recover more than once for the same act or omission.

What is deemed instituted in every criminal prosecution is the civil liability arising from the crime or delict per se (civil liability *ex delicto*), but not those liabilities arising from quasi-delicts, contracts or

quasi-contracts. In fact, even if a civil action is filed separately, the *ex delicto* civil liability in the criminal prosecution remains, and the offended party may -- subject to the control of the prosecutor -- still intervene in the criminal action, in order to protect the remaining civil interest therein.

This discussion is completely in accord with the Revised Penal Code, which states that "[e]very person criminally liable for a felony is also civilly liable."

Petitioner argues that, as an employer, it is considered a party to the criminal case and is conclusively bound by the outcome thereof. Consequently, petitioner must be accorded the right to pursue the case to its logical conclusion -- including the appeal.

The argument has no merit. Undisputedly, petitioner is not a direct party to the criminal case, which was filed solely against Napoleon M. Roman, its employee.

In its Memorandum, petitioner cited a comprehensive list of cases dealing with the subsidiary liability of employers. Thereafter, it noted that none can be applied to it, because "in all th[o]se cases, the accused's employer did not interpose an appeal ."Indeed, petitioner cannot cite any single case in which the employer appealed, precisely because an appeal in such circumstances is not possible.

The cases dealing with the subsidiary liability of employers uniformly declare that, strictly speaking, they are not parties to the criminal cases instituted against their employees. Although in substance and in effect, they have an interest therein, this fact should be viewed in the light of their subsidiary liability. While they may assist their employees to the extent of supplying the latter's lawyers, as in the present case, the former cannot act independently on their own behalf, but can only defend the accused.

JONA BUMATAY, ***Petitioner***, **-versus- LOLITA BUMATAY**, ***Respondents***.
G.R. No. 191320, FIRST DIVISION, April 25, 2017, CAGUIOA, J.

In criminal cases, the People is the real party-in-interest and only the OSG can represent the People in criminal proceedings before this Court. Inasmuch as the private offended party is but a witness in the prosecution of offenses, the interest of the private offended party is limited only to the aspect of civil liability. It follows therefore that in criminal cases, the dismissal of the case against an accused can only be appealed by the Solicitor General, acting on behalf of the State.

Clearly, the petition is bereft of any claim for civil liability. In fact, the petitioner did not even briefly discuss the alleged civil liability of the respondents. As such, it is apparent that the petitioner's only desire was to appeal the dismissal of the criminal case against the respondents. Since estafa, however, is a criminal offense, only the OSG has the power to prosecute the case on appeal. Therefore, the petitioner lacked the personality or legal standing to question the RTC decision.

FACTS:

Lolita allegedly married a certain Amado Rosete (Amado) on January 30, 1968, when she was 16 years old. The marriage was solemnized before Judge Delfin D. Rosario, in Malasiqui, Pangasinan. Prior to the declaration of nullity of her marriage with Amado on September 20, 2005, Lolita married Jona's foster father, Jose Bumatay (Jose), on November 6, 2003.

On August 17, 2004, Jona filed a *Complaint-affidavit* for Bigamy against Lolita.

Subsequently, an Information for Bigamy was filed by Prosecutor Bernardo S. Valdez of the Office of the Provincial Prosecutor of San Carlos City, with the Regional Trial Court of San Carlos City, Pangasinan, Branch 56 (RTC-San Carlos) on November 8, 2004.

Meanwhile, sometime in January 2005 - after the Information for Bigamy against her was filed[14] in the RTC-San Carlos but before her arraignment, Lolita filed with the Regional Trial Court of Dagupan City, Pangasinan, Branch 43 (RTC-Dagupan City) a petition for the declaration of nullity of her marriage to Amado.

On September 20, 2005, the RTC-Dagupan City issued a *Decision* declaring as null and void the marriage between Lolita and Amado.

In the bigamy case in RTC-San Carlos involving Criminal Case No. SCC-4357, Lolita sought a deferment of the arraignment for bigamy. On November 2, 2005, she filed a *Motion to Quash* the Information. Her motion was hinged on the argument that the first element of the crime of bigamy - that is, that the offender has been previously legally married - is not present. In support, Lolita attached a copy of the RTC-Dagupan City *Decision* declaring the marriage between her and Amado void *ab initio* on the ground that there was no marriage ceremony between them and what transpired was a marriage by proxy.

Subsequently, in its *Order* dated March 20, 2006, the RTC-San Carlos **granted** Lolita's *Motion to Quash* and dismissed the complaint for bigamy.

In its *Decision* dated August 28, 2009, the CA **affirmed** the RTC-San Carlos' *Order* dated March 20, 2006 granting the *Motion to Quash* and **dismissed** Jona's appeal.

Jona's *Motion for Reconsideration* was likewise denied by the CA in its *Resolution* dated February 4, 2010.

On April 5, 2010, Jona filed, in her personal capacity, the instant petition. In a Resolution dated April 28, 2010, the Court required Lolita to file her comment.41 Lolita filed her Comment on June 11, 2010, while Jona filed her Reply (with Compliance) on March 9, 2011.

ISSUE:

Whether or not the petitioner legal personality to assail the dismissal of the criminal case. (NO)

RULING:

Based on the records, it appears undisputed that Petitioner has no legal personality to assail the dismissal of the criminal case. Rule 110, Section 5of the Revised Rules of Criminal Procedure, dictates that all criminal actions commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In appeals of criminal cases before the Supreme Court, the authority to represent the State is vested solely in the Office of the Solicitor General (OSG).

This authority is codified in Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code, which provides:

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

> (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied)

Thus, in criminal cases, the People is the real party-in-interest and only the OSG can represent the People in criminal proceedings before this Court. Inasmuch as the private offended party is but a witness in the prosecution of offenses, the interest of the private offended party is limited only to the aspect of civil liability. It follows therefore that in criminal cases, the dismissal of the case against an accused can only be appealed by the Solicitor General, acting on behalf of the State.

In *Beams Philippine Export Corp. v. Castillo*, a similar appeal by a private party of a criminal case, the Court cogently disposed, thus:

"The purpose of a criminal action, in its purest sense, is to determine the penal liability of the accused for having outraged the state with his crime and, if he be found guilty, to punish him for it. In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state."

Consequently, the sole authority to institute proceedings before the CA or the SC is vested only on the OSG. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the Government in the [SC] and the [CA] in all criminal proceedings x x x." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Clearly, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.

Moreover, in *Bautista v. Cuneta-Pangilinan,* this Court held that in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the OSG, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.

In the present case, a perusal of the petition for *certiorari* filed by the petitioner before the CA discloses that it sought reconsideration of the criminal aspect of the decision of the RTC, not the civil aspect of the case. Xxx

x x x x

Clearly, the petition is bereft of any claim for civil liability. In fact, the petitioner did not even briefly discuss the alleged civil liability of the respondents. As such, it is apparent that the petitioner's only desire was to appeal the dismissal of the criminal case against the respondents. Since *estafa*, however,

is a criminal offense, only the OSG has the power to prosecute the case on appeal. Therefore, the petitioner lacked the personality or legal standing to question the RTC decision.

While this Court is mindful of cases where the private offended party was allowed to pursue a criminal action on his or her own behalf — such as when there is a denial of due process - such exceptional circumstances do not exist in this case. The OSG, in its *Manifestation*, expressly stated that it will not file a reply to Lolita's *comment* on the petition for review on certiorari considering that it did not file the present petition.

To be sure, Jona's personality to even institute the bigamy case and thereafter to appeal the RTC-San Carlos' *Order* dismissing the same is nebulous, at best. Settled is the rule that "every action must be prosecuted or defended in the name of the real party in interest[,]" who, in turn, is one "who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit." Within this context, "interest" means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere interest in the question involved. To be clear, real interest refers to a present substantial interest, and not a mere expectancy, or a future, contingent, subordinate or consequential interest.

Here, the record is replete with indications that Jona's natural parents are unknown and she was merely raised as the "foster daughter" of Jose Bumatay, without having undergone the process of legal adoption. It likewise does not escape the Court's attention that in the *Petition for the Issuance of Letters of Administration* filed by Rodelio Bumatay (Jose Bumatay's nephew), Jona was described as "claiming to be the adopted [child] of [Jose] but cannot present legal proof to this effect". Finally, even in her own *Reply*(to the comment to the petition for review), Jona merely denotes herself as "the only child of the late Jose Bumatay,"without, however, presenting or even indicating any document or proof to support her claim of personality or legal standing.

FROILAN C. GANDIONCO, *Petitioner*, -versus- HON. SENEN C. PEÑARANDA, as Presiding Judge of the Regional Trial Court of Misamis Oriental, Branch 18, Cagayan de Oro City, and TERESITA S. GANDIONCO, *Respondents*.
G.R. No. 79284, SECOND DIVISION, November 27, 1987, PADILLA, *J.*

In *Jerusalem vs. Hon. Roberto Zurbano*, the Court's statement to the effect that suspension of an action for legal separation would be proper if an allegation of concubinage is made therein, relied solely on Sec. 1 of Rule 107 of the *then* provisions of the Rules of Court on criminal procedure, to wit:

> Sec. 1. *Rules governing civil actions arising from offenses.*-Except as otherwise provided by law, the following rules shall he observed:
>
> xxx
>
> (c) *After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted and the same shall be suspended in whatever stage it may be found until final judgment in the criminal proceeding has been rendered* ... (Emphasis supplied)

The governing rule is now Sec. 3, Rule 111, 1985 Rules on Criminal Procedure which refers to "civil actions to enforce the civil liability arising from the offense" as contemplated in the first paragraph of Section 1 of Rule 111-which is a civil action "for recovery of civil liability arising from the offense

charged." Sec. 1, Rule 111, (1985) is specific that it refers to civil action for the recovery of civil liability arising from the offense charged. Whereas, the old Sec. 1 (c), Rule 107 simply referred to "Civil action arising from the offense."

As earlier noted, this action for legal separation is not to recover civil liability, in the main, but is aimed at the conjugal rights of the spouses and their relations to each other, within the contemplation of Articles 7 to 108, of the Civil Code."

FACTS:

On 29 May 1986, private respondent, the legal wife of the petitioner, filed with the Regional Trial Court of Misamis Oriental, 10th Judicial District, Branch 18, in Cagayan de Oro City, presided over by respondent Judge, a complaint against petitioner for legal separation, on the ground of concubinage, with a petition for support and payment of damages. This case was docketed as Civil Case No. 10636. On 13 October 1986, private respondent also filed with the Municipal Trial Court, General Santos City, a complaint against petitioner for concubinage, which was docketed on 23 October 1986 as Criminal Case No. 15437111. On 14 November 1986, application for the provisional remedy of support *pendente lite,* pending a decision in the action for legal separation, was filed by private respondent in the civil case for legal separation. The respondent judge, as already stated, on 10 December 1986, ordered the payment of support *pendente lite.*

ISSUE:

Whether or not petitioner is correct in saying that the civil action for legal separation and the incidents consequent thereto, such as, application for support *pendente lite,* should be suspended in view of the criminal case for concubinage filed against him the private respondent. (NO)

RULING:

In support of his contention, petitioner cites Art. III. Sec. 3 of the 1985 Rules on Criminal Procedure, which states:

> SEC. 3. *Other Civil action arising from offenses.* — Whenever the offended party shall have instituted the civil action to enforce the civil liability arising from the offense. as contemplated in the first Section 1 hereof, the following rules shall be observed:
>
> (a) After a criminal action has been commenced the pending civil action arising from the same offense shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered. . . .

The civil action for legal separation, grounded as it is on concubinage, it is petitioner's position that such civil action arises from, or is inextricably tied to the criminal action for concubinage, so that all proceedings related to legal separation will have to be suspended to await conviction or acquittal for concubinage in the criminal case. Authority for this position is this Court's decision in the case of *Jerusalem vs. Hon. Roberto Zurbano*.

In *Jerusalem,* the Court's statement to the effect that suspension of an action for legal separation would be proper if an allegation of concubinage is made therein, relied solely on Sec. 1 of Rule 107 of the *then* provisions of the Rules of Court on criminal procedure, to wit:

> Sec. 1. *Rules governing civil actions arising from offenses.*-Except as otherwise provided by law, the following rules shall he observed:
>
> xxx
>
> (c) *After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted and the same shall be suspended in whatever stage it may be found until final judgment in the criminal proceeding has been rendered* ... (Emphasis supplied)

The provisions last quoted did not clearly state, as the 1985 Rules do, that the civil action to be suspended, with or upon the filing of a criminal action, is one which is "to enforce the civil liability arising from the offense". In other words, in view of the amendment under the 1985 Rules on Criminal Procedure, a civil action for legal separation, based on concubinage, may proceed ahead of, or simultaneously with, a criminal action for concubinage, because said civil action is *not* one "to enforce the civil liability arising from the offense" even if both the civil and criminal actions arise from or are related to the same offense. Such civil action is one intended to obtain the right to live separately, with the legal consequences thereof, such as, the dissolution of the conjugal partnership of gains, custody of offsprings, support, and disqualification from inheriting from the innocent spouse, among others. As correctly pointed out by the respondent Judge in his Order dated 5 August 1987:

The unreported case of JERUSALEM vs. Hon. Roberto Zurbano, Judge of CFI of Antique, et al., L-11935, April 24, 1959 (105 Phil. 1277) is not controlling. It applied paragraph C of Sec. 1, of then Rule 107 of the Rules of Court, which reads:

After a criminal action has been commenced, *no civil action arising from the same offense can be prosecuted* and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered. (Emphasis supplied)

The governing rule is now Sec. 3, Rule 111, 1985 Rules on Criminal Procedure which refers to "civil actions to enforce the civil liability arising from the offense" as contemplated in the first paragraph of Section 1 of Rule 111-which is a civil action "for recovery of civil liability arising from the offense charged." Sec. 1, Rule 111, (1985) is specific that it refers to civil action for the recovery of civil liability arising from the offense charged. Whereas, the old Sec. 1 (c), Rule 107 simply referred to "Civil action arising from the offense."

As earlier noted, this action for legal separation is not to recover civil liability, in the main, but is aimed at the conjugal rights of the spouses and their relations to each other, within the contemplation of Articles 7 to 108, of the Civil Code."

Petitioner also argues that his conviction for concubinage will have to be first secured before the action for legal separation can prosper or succeed, as the basis of the action for legal separation is his alleged offense of concubinage.

Petitioner's assumption is erroneous.

A decree of legal separation, on the ground of concubinage, may be issued upon proof by preponderance of evidence in the action for legal separation. No criminal proceeding or conviction

is necessary. To this end, the doctrine in *Francisco vs. Tayao* has been modified, as that case was decided under Act. No. 2710, when absolute divorce was then allowed and had for its grounds the same grounds for legal separation under the New Civil Code, with the requirement, under such former law, that the guilt of defendant spouses had to be established by final judgment in a criminal action. That requirement has not been reproduced or adopted by the framers of the present Civil Code, and the omission has been uniformly accepted as a modification of the stringent rule in *Francisco v. Tayao.*

SPOUSES BENITO LO BUN TIONG and CAROLINE SIOK CHING TENG,*Petitioners*,
vs.
VICENTE BALBOA, *Respondent.*
G.R. No. 158177, THIRD DIVISION, January 28, 2008, Austria-Martinez, J.

A separate proceeding for the recovery of civil liability in cases of violations of B.P. No. 22 is allowed when the civil case is filed ahead of the criminal case.

FACTS:

Balboa filed two (2) cases against Sps. Benito Lo Bun Tiong and Caroline Siok Ching Teng:

(1) A CIVIL CASE for sum of money based on the three (3) post-dated checks issued by Caroline in the total amount of P5,175,250.00. The Regional Trial Court found the spouses liable and ordered them to pay the amount.

(2) A CRIMINAL CASE for violation of Batas Pambansa Blg. 22 against Caroline covering the said three checks. The Municipal Trial Court acquitted Caroline but held her civilly liable. On appeal, the RTC modified the MTC Decision by deleting the award of civil damages.
The spouses now comes to court charging Balboa with forum-shopping.

ISSUE:

Whether or not the Balboa's act of filing civil and criminal cases constitute forum-shopping.

RULING:

Forum shopping is the institution of two or more actions or proceedings grounded on the same cause, on the supposition that one or the other court would render a favorable disposition. It is usually resorted to by a party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek and possibly to get a favorable opinion in another forum, other than by an appeal or a special civil action for certiorari.

There is forum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars, such that any judgment rendered in the other action will amount to res judicata in the action under consideration or will constitute litis pendentia.

In Hyatt Industrial Manufacturing Corp. v. Asia Dynamic Electrix Corp., the Court ruled that there is identity of parties and causes of action between a civil case for the recovery of sum of money as a

result of the issuance of bouncing checks, and a criminal case for the prosecution of a B.P. No. 22 violation. Thus, it ordered the dismissal of the civil action so as to prevent double payment of the claim.

In the said case, the Court applied Supreme Court Circular No. 57-97 effective September 16, 1997, which provides that "the criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such action separately shall be allowed or recognized."

This was later adopted as Rule 111(b) of the 2000 Revised Rules of Criminal Procedure, to wit: (b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

The foregoing, however, is not applicable as the civil and criminal case were filed on February 24, 1997 and on July 21, 1997, respectively, prior to the adoption of Supreme Court Circular No. 57-97 on September 16, 1997. At the time of filing of the cases, the governing rule is Section 1, Rule 111 of the 1985 Rules of Court, to wit:

SEC. 1. Institution of criminal and civil actions. – When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

Since Balboa instituted the civil action prior to the criminal action, then the civil case may proceed independently of the criminal cases and there is no forum shopping to speak of. Even under the amended rules, a separate proceeding for the recovery of civil liability in cases of violations of B.P. No. 22 is allowed when the civil case is filed ahead of the criminal case. Even then, the Rules encourage the consolidation of the civil and criminal cases.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*,
vs.
ROGELIO BAYOTAS y CORDOVA, *Accused-Appellant*.
G.R. No. 102007, EN BANC, September 2, 1994, Romero, J.

FACTS:

Bayotas died on February 4, 1992 at the National Bilibid Hospital due to cardio respiratory arrest. Consequently, the Supreme Court in its Resolution of May 20, 1992 dismissed the criminal aspect of the appeal. However, it required the Solicitor General to file its comment with regard to Bayotas' civil liability arising from his commission of the offense charged.

ISSUE:
Whether or not the death of the accused Bayotas extinguished his criminal liability and civil liability based solely on the act complained.

RULING:

Yes. The Supreme Court held that the death of the accused Bayotas extinguished his criminal liability and civil liability based solely on the act complained of, i.e., rape. The Court ruled that: (1) death of

the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon; (2) the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict, such as law, contracts, quasi-contracts or quasi-delicts; (3) where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure; and (4) the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action for in such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case.

ABS-CBN BROADCASTING CORPORATION, EUGENIO LOPEZ, JR., AUGUSTO ALMEDA-LOPEZ, and OSCAR M. LOPEZ, *Petitioners*,
vs.
OFFICE OF THE OMBUDSMAN, ROBERTO S. BENEDICTO,* EXEQUIEL B. GARCIA, MIGUEL V. GONZALES, and SALVADOR (BUDDY) TAN,* *Respondent*.
G.R. No. 133347, THIRD DIVISION, October 15, 2008, Nachura, *J.*

FACTS:

Petitioners, all surnamed Lopez, as officers and on behalf of ABS-CBN, executed separate complaint-affidavits charging private respondents Roberto S. Benedicto, Exequiel B. Garcia, Miguel V. Gonzalez, and Salvador (Buddy) Tan with the following crimes penalized under the Revised Penal Code (RPC): (a) Article 298 - Execution of Deeds by Means of Violence or Intimidation; (b) Article 315 paragraphs 1[b], 2[a], 3[a] - Estafa; (c) Article 308 - Theft; (d) Article 302 - Robbery; (e) Article 312 - Occupation of Real Property or Usurpation of Real Rights in Property; and (f) Article 318 - Other Deceits.

Before anything else, we note that on April 5, 1999 and June 13, 2000, the respective counsel for respondents Tan and Benedicto, in compliance with Section 16,11 Rule 3 of the Rules of Court, filed pleadings informing the Court of their clients' demise. Benedicto's counsel filed a Notice of Death (With Prayer for Dismissal)12 moving that Benedicto be dropped as respondent in the instant case for the reason "that the pending criminal cases subject of this appeal are actions which do not survive the death of the party accused."
Petitioners opposed the move to drop Benedicto as respondent, citing Torrijos v. Court of Appeals13 which held that "civil liability of the accused survives his death; because death is not a valid cause for the extinguishment of civil obligations.

ISSUE:

Whether the civil liability of an accused, upon death, is extinguished together with his criminal liability.

RULING:

In the case of People v. Bayotas,

1. Death of an accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability

directly arising from and based solely on the offense committed, i.e., civil liability ex delicto in senso strictiore."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
   a) Law
   b) Contracts
   c) Quasi-contracts
   d) x x x
   e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure15 as amended. The separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible [de]privation of right by prescription.

Applying the foregoing rules, ABS-CBN's insistence that the case at bench survives because the civil liability of the respondents subsists is stripped of merit.

To begin with, there is no criminal case as yet against the respondents. The Ombudsman did not find probable cause to prosecute respondents for various felonies in the RPC. As such, the rule that a civil action is deemed instituted along with the criminal action unless the offended party: (a) waives the civil action, (b) reserves the right to institute it separately, or (c) institutes the civil action prior to the criminal action,16 is not applicable.

In any event, consistent with People v. Bayotas,17 the death of the accused necessarily calls for the dismissal of the criminal case against him, regardless of the institution of the civil case with it. The civil action which survives the death of the accused must hinge on other sources of obligation provided in Article 1157 of the Civil Code. In such a case, a surviving civil action against the accused founded on other sources of obligation must be prosecuted in a separate civil action. In other words, civil liability based solely on the criminal action is extinguished, and a different civil action cannot be continued and prosecuted in the same criminal action.

PEOPLE OF THE PHILIPPINES, *Plaintiff -Appellee*,
vs.
MARCELINO DADAO, ANTONIO SULINDAO, EDDIE MALOGSI (deceased) and ALFEMIO MALOGSI,* *Accused-Appellants*.
G.R. No. 201860, FIRST DIVISION, January 22, 2014,

FACTS:

That on or about the 11th day of July 1993, at 7:30 in the evening more or less at barangay Salucot, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with (sic) one another, with intent to kill, by means of treachery, armed with guns and bolos, did then and there wilfully, unlawfully and criminally attack, assault and sho[o]t PIONIO YACAPIN, hitting his back and left leg, inflicting wounds that cause[d] his death thereafter.

Prosecution's first witness, Ronie Dacion, a 14-year old stepson of the victim, Pionio Yacapin, testified that on July 11, 1993 at about 7:30 in the evening he saw accused Marcelino Dadao, Antonio Sulindao, Eddie Malogsi and [A]lfemio Malogsi helping each other and with the use of firearms and bolos, shot to death the victim, Pionio Yacapin in their house at Barangay Salucot, Talakag, Bukidnon.

The testimony of the second witness for the prosecution, Edgar Dacion, a 12-year old stepson of the victim, corroborates the testimony of his older brother Ronie Dacion.

After trial was concluded, a guilty verdict was handed down by the trial court finding appellants guilty beyond reasonable doubt of murdering Pionio Yacapin.

ISSUE:

Whether the court a quo gravely erred in convicting the appelants of the crime charged depite the failure of the prosecution to prove their guilt beyond reasonable doubt.

RULING:

The credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.

Furthermore, appellants contend that the prosecution witnesses made inconsistent and improbable statements in court which supposedly impair their credibility, such as whether or not the stepsons of the victim left for Ticalaan together to report the incident, whether the accused were still firing at the victim when they left or not, and whether or not the accused went after the stepsons after shooting the victim. We have reviewed the relevant portions of the transcripts pointed out by the appellants and have confidently arrived at the conclusion that these are matters involving minor inconsistencies pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue. We elucidated on this subject in Avelino v. People,13 to wit:

Given the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. 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-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness.

SAN MIGUEL PROPERTIES, INC., *Petitioner*,
vs.
SEC. HERNANDO B. PEREZ, ALBERT C. AGUIRRE, TEODORO B. ARCENAS, JR., MAXY S. ABAD, JAMES G. BARBERS, STEPHEN N. SARINO, ENRIQUE N. ZALAMEA, JR., MARIANO M. MARTIN, ORLANDO O. SAMSON, CATHERINE R. AGUIRRE, AND ANTONIO V. AGCAOILI, *Respondents.*
G.R. No. 166836, FIRST DIVISION, September 4, 2013, Bersamin, *J.*

FACTS:

Petitioner San Miguel Properties Inc. (San Miguel Properties), a domestic corporation engaged in the real estate business, purchased in 1992, 1993 and April 1993 from B.F. Homes, Inc. (BF Homes), then represented by Atty. Florencio B. Orendain (Orendain) as its duly authorized rehabilitation receiver appointed by the Securities and Exchange Commission (SEC),2 130 residential lots situated in its subdivision BF Homes Parañaque, containing a total area of 44,345 square meters for the aggregate price of ₱106,248,000.00. The transactions were embodied in three separate deeds of sale.3 The TCTs covering the lots bought under the first and second deeds were fully delivered to San Miguel Properties, but 20 TCTs covering 20 of the 41 parcels of land with a total area of 15,565 square meters purchased under the third deed of sale, executed in April 1993 and for which San Miguel Properties paid the full price of ₱39,122,627.00, were not delivered to San Miguel Properties.

On its part, BF Homes claimed that it withheld the delivery of the 20 TCTs for parcels of land purchased under the third deed of sale because Atty. Orendain had ceased to be its rehabilitation receiver at the time of the transactions after being meanwhile replaced as receiver by FBO Network Management, Inc. on May 17, 1989 pursuant to an order from the SEC.4
BF Homes refused to deliver the 20 TCTs despite demands. Thus, on August 15, 2000, San Miguel Properties filed a complaint-affidavit in the Office of the City Prosecutor of Las Piñas City (OCP Las Piñas) charging respondent directors and officers of BF Homes with non-delivery of titles in violation of Section 25, in relation to Section 39, both of Presidential Decree No. 957 the OCP Las Piñas rendered its resolution,10 dismissing San Miguel Properties' criminal complaint for violation of Presidential Decree No. 957 on the ground that no action could be filed by or against a receiver without leave from the SEC that had appointed him; that the implementation of the provisions of Presidential Decree No. 957 exclusively pertained under the jurisdiction of the HLURB; that there existed a prejudicial question necessitating the suspension of the criminal action until after the issue on the liability of the distressed BF Homes was first determined by the SEC en banc or by the HLURB; and that no prior resort to administrative jurisdiction had been made; that there appeared to be no probable cause to indict respondents for not being the actual signatories in the three deeds of sale.

ISSUE:

whether the HLURB administrative case brought to compel the delivery of the TCTs could be a reason to suspend the proceedings on the criminal complaint for the violation of Section 25 of Presidential Decree No. 957 on the ground of a prejudicial question.

RULING:

Action for specific performance, even if pending in the HLURB, an administrative agency, raises a prejudicial question BF Homes' posture that the administrative case for specific performance in the HLURB posed a prejudicial question that must first be determined before the criminal case for violation of Section 25 of Presidential Decree No. 957 could be resolved is correct.

A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in the criminal case, and the cognizance of which pertains to another tribunal. It is determinative of the criminal case, but the jurisdiction to try and resolve it is lodged in another court or tribunal. It is based on a fact distinct and separate from the crime but is so intimately connected with the crime that it determines the guilt or innocence of the accused.22 The rationale behind the principle of prejudicial question is to avoid conflicting decisions.23 The essential elements of a prejudicial question are provided in Section 7, Rule 111 of the Rules of Court, to wit: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The concept of a prejudicial question involves a civil action and a criminal case. Yet, contrary to San Miguel Properties' submission that there could be no prejudicial question to speak of because no civil action where the prejudicial question arose was pending, the action for specific performance in the HLURB raises a prejudicial question that sufficed to suspend the proceedings determining the charge for the criminal violation of Section 2524 of Presidential Decree No. 957. This is true simply because the action for specific performance was an action civil in nature but could not be instituted elsewhere except in the HLURB, whose jurisdiction over the action was exclusive and original.25

The determination of whether the proceedings ought to be suspended because of a prejudicial question rested on whether the facts and issues raised in the pleadings in the specific performance case were so related with the issues raised in the criminal complaint for the violation of Presidential Decree No. 957, such that the resolution of the issues in the former would be determinative of the question of guilt in the criminal case. An examination of the nature of the two cases involved is thus necessary.

RENATO S.D. DOMINGO on his own behalf and on behalf of his coheirs of the late SPOUSES FELICIDAD DE DOMINGO and MACARIO C. DOMINGO, *Petitioners,*
vs.
SPOUSES ENGRACIA D. SINGSON and MANUEL F. SINGSON, *Respondents.*
G.R. No. 203287, THIRD DIVISION, April 5, 2017, Reyes, J.

FACTS:

The Spouses Domingo owned a parcel of land, situated in F. Sevilla Street, San Juan, Metro Manila, covered by Transfer Certificate of Title (TC1) No. 32600 (23937) 845-R,6 and the house built thereon (subject property). Macario died on February 22, 1981, while Felicidad died on September 14, 1997.7

It appears that on September 26, 2006, Engracia filed with the Metropolitan Trial Court of Manila a complaint8 for ejectment/unlawful detainer, docketed as Civil Case No. 9534, against Consolacion, Rosario, Rafael, and Ramon. Engracia claimed that she is the absolute owner of the subject property, having bought the same from the Spouses Domingo as evidenced by an Absolute Deed of Sale9 dated June 6, 2006. She likewise averred that TCT No. 32600 (23937) 845-R was already cancelled and TCT

No. 1257510 covering the subject property was already issued under her name. The petitioners only learned of the supposed sale of the subject property when they received the summons and a copy of Engracia's complaint in Civil Case No. 9534.

Consequently, on July 31, 2006, the petitioners filed a complaint11 with the Regional Trial Court (RTC) of Pasig City, which sought the nullity of the sale. They alleged that the Absolute Deed of Sale dated June 6, 2006, upon which Engracia bases her ownership of the subject property, was a nullity since the signatures of their parents appearing thereon as the supposed vendors were forged. 12 The case was docketed as Civil Case No. 70898 and was raffled to Branch 160 of the RTC.

Meanwhile, on February 28, 2007, Renato, Consolacion, and Ramon filed a Joint Affidavit Complaint13 with the Office of the City Prosecutor (OCP) of Pasig City, claiming that Engracia falsified the signatures of their parents in the Absolute Deed of Sale and, thus, charging her with the crimes of falsification of public document, estafa, and use of falsified documents. Consequently, on May 6, 2008, the OCP filed an Information14 with the RTC, charging Spouses Engracia and Manuel Singson (Spouses Singson) with the crime of estafa through falsification of public documents. The case was docketed as Criminal Case No. 137867 and was raffled to Branch 264 of the RTC.

On July 11, 2008, the Spouses Singson filed a Motion to Suspend Proceedings Due to Prejudicial Question15 with the RTC in Criminal Case No. 137867. They alleged that the validity and genuineness of the Absolute Deed of Sale, which is the subject of Civil Case No. 70898 then still pending with the RTC Branch 160, are determinative of their guilt of the crime charged.

ISSUE:

Whether the proceedings in Criminal Case No. 137867 were properly suspended on the ground of prejudicial question

RULING:

A prejudicial question is understood in law to be that which arises in a case the resolution of which is a logical antecedent of the issue involved in said case and the cognizance of which pertains to another tribunal. The doctrine of prejudicial question comes into play generally in a situation where civil and criminal actions are pending and the issues involved in both cases are similar or so closely related that an issue must be pre-emptively resolved in the civil case before the criminal action can proceed. 53 The rationale behind the principle of prejudicial question is to avoid two conflict decisions. 54

For a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil case, the following requisites must -be present: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal. 55

Based on the issues raised in both Civil Case No. 70898 and Criminal Case No. 137867 against the Spouses Singson, and in the light of the foregoing concepts of a prejudicial question, there indeed

appears to be a prejudicial question in the case at bar. The defense of the Spouses Singson in the civil case for annulment of sale is that Engracia bought the subject property from her parents prior to their demise and that their signatures appearing on the Absolute Deed of Sale are true and genuine. Their allegation in the civil case is based on the very same facts, which would be necessarily determinative of their guilt or innocence as accused in the criminal case.

TEODORO A. REYES, *Petitioner,* v. ETTORE ROSSI, *Respondents*
G.R. No. 159823, FIRST DIVISION, February 18, 2013, Bersamin, *J.*

FACTS:

Petitioner Teodoro A. Reyes (Reyes) and Advanced Foundation Construction Systems Corporation (Advanced Foundation), represented by its Executive Project Director, respondent Ettore Rossi (Rossi), executed a deed of conditional sale involving the purchase by Reyes of equipment consisting of a Warman Dredging Pump HY 300A worth P10,000,000.00. The parties agreed therein that Reyes would pay the sum of P3,000,000.00 as downpayment, and the balance of P7,000,000.00 through four post-dated checks. Reyes complied, but in January 1998, he requested the restructuring of his obligation under the deed of conditional sale by replacing the four post-dated checks with nine post-dated checks that would include interest at the rate of P25,000.00/month accruing on the unpaid portion of the obligation on April 30, 1998, June 30, 1998, July 31, 1998, September 30, 1998 and October 31, 1998.1

Advanced Foundation assented to Reyes' request, and returned the four checks. In turn, Reyes issued and delivered the following nine post-dated checks in the aggregate sum of P7,125,000.00.Rossi deposited three of the post-dated checks (i.e., No. 72807, No. 79125 and No. 72808) on their maturity dates in Advanced Foundation's bank account at the PCI Bank in Makati. Two of the checks were denied payment ostensibly upon Reyes' instructions to stop their payment, while the third (i.e., No. 72802) was dishonored for insufficiency of funds.3

Rossi likewise deposited two more checks (i.e., No. 72809 and No. 72801) in Advanced Foundation's account at the PCI Bank in Makati, but the checks were returned with the notation Account Closed stamped on them. He did not anymore deposit the three remaining checks on the assumption that they would be similarly dishonored.4

In the meanwhile, on July 29, 1998, Reyes commenced an action for rescission of contract and damages in the Regional Trial Court in Quezon City (RTC). On September 8, 1998, Rossi charged Reyes with five counts of estafa and five counts of violation of Batas Pambansa Blg. 22 in the Office of the City Prosecutor of Makati for the dishonor of Checks No. 72807, No. 72808, No. 72801, No. 72809 and No. 79125. Another criminal charge for violation of Batas Pambansa Blg. 22 was lodged against Reyes in the Office of the City Prosecutor of Quezon City for the dishonor of Check No. 72802. The Assistant City Prosecutor handling the preliminary investigation recommended the dismissal of the charges of estafa and the suspension of the proceedings relating to the violation of Batas Pambansa Blg. 22 based on a prejudicial question.

ISSUE:

Whether or not the civil action for rescission of the contract of sale raised a prejudicial question that required the suspension of the criminal prosecution for violation of Batas Pambansa Blg. 22.

RULING:

In Sabandal v. Tongco,18 the concept of prejudicial question is explained in this wise:

For a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil, the following requisites must be present: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal.

A careful perusal of the complaint for rescission of contract and damages reveals that the causes of action advanced by respondent Reyes are the alleged misrepresentation committed by the petitioner and AFCSC and their alleged failure to comply with his demand for proofs of ownership. On one hand, he posits that his consent to the contract was vitiated by the fraudulent act of the company in misrepresenting the condition and quality of the dredging pump. Alternatively, he claims that the company committed a breach of contract which is a ground for the rescission thereof. Either way, he in effect admits the validity and the binding effect of the deed pending any adjudication which nullifies the same.

Indeed, under the law on contracts, vitiated consent does not make a contract unenforceable but merely voidable, the remedy of which would be to annul the contract since voidable contracts produce legal effects until they are annulled. On the other hand, rescission of contracts in case of breach pursuant to Article 1191 of the Civil Code of the Philippines also presupposes a valid contract unless rescinded or annulled.

As defined, a prejudicial question is one that arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal.

It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. It comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case.

In this light, it is clear that the pendency of the civil case does not bar the continuation of the proceedings in the preliminary investigation on the ground that it poses a prejudicial question. Considering that the contracts are deemed to be valid until rescinded, the consideration and obligatory effect thereof are also deemed to have been validly made, thus demandable. Consequently, there was no failure of consideration at the time when the subject checks were dishonored.

VINCENT E. OMICTIN, *Petitioner*,

vs.
HON. COURT OF APPEALS (Special Twelfth Division) and GEORGE I. LAGOS, *Respondents.*
G.R. No.148004, FIRST DIVISION, January 22, 2007, Azcuna, J.

FACTS:

Petitioner Vincent E. Omictin, Operations Manager Ad Interim of Saag Phils., Inc., filed a complaint for two counts of estafa with the Office of the City Prosecutor of Makati against private respondent George I. Lagos. He alleged that private respondent, despite repeated demands, refused to return the two company vehicles entrusted to him when he was still the president of Saag Phils., Inc..

On February 26, 1999, public prosecutor Alex G. Bagaoisan recommended the indictment of private respondent, and on the same day, respondent was charged with the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code before the Regional Trial Court (RTC).

ISSUE:

Whether or not a prejudicial question exists to warrant the suspension of the criminal proceedings pending the resolution of the intra-corporate controversy that was originally filed with the SEC.

RULING:

A prejudicial question is defined as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal.14 Here, the case which was lodged originally before the SEC and which is now pending before the RTC of Mandaluyong City by virtue of Republic Act No. 8799 involves facts that are intimately related to those upon which the criminal prosecution is based.
Ultimately, the resolution of the issues raised in the intra-corporate dispute will determine the guilt or innocence of private respondent in the crime of estafa filed against him by petitioner before the RTC of Makati. As correctly stated by the CA, one of the elements of the crime of estafa with abuse of confidence under Article 315, par. 1(b) of the Revised Penal Code is a demand made by the offended party to the offender.

A prejudicial question is defined as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal.14 Here, the case which was lodged originally before the SEC and which is now pending before the RTC of Mandaluyong City by virtue of Republic Act No. 8799 involves facts that are intimately related to those upon which the criminal prosecution is based.

Ultimately, the resolution of the issues raised in the intra-corporate dispute will determine the guilt or innocence of private respondent in the crime of estafa filed against him by petitioner before the RTC of Makati. As correctly stated by the CA, one of the elements of the crime of estafa with abuse of confidence under Article 315, par. 1(b) of the Revised Penal Code is a demand made by the offended party to the offender.

Logically, under the circumstances, since the alleged offended party is Saag Phils., Inc., the validity of the demand for the delivery of the subject vehicles rests upon the authority of the person making such a demand on the company's behalf. Private respondent is challenging petitioner's authority to act for Saag Phils., Inc. in the corporate case pending before the RTC of Mandaluyong, Branch 214.

Taken in this light, if the supposed authority of petitioner is found to be defective, it is as if no demand was ever made, hence, the prosecution for estafa cannot prosper. Moreover, the mere failure to return the thing received for safekeeping or on commission, or for administration, or under any other obligation involving the duty to deliver or to return the same or deliver the value thereof to the owner could only give rise to a civil action and does not constitute the crime of estafa. This is because the crime is committed by misappropriating or converting money or goods received by the offender under a lawful transaction. As stated in the case of United States v. Bleibel:

The crime of estafa is not committed by the failure to return the things received for sale on commission, or to deliver their value, but, as this class of crime is defined by law, by misappropriating or converting the money or goods received on commission. Delay in the fulfillment of a commission or in the delivery of the sum on such account received only involves civil liability. So long as the money that a person is under obligation to deliver is not demanded of him, and he fails to deliver it for having wrongfully disposed of it, there is no estafa, whatever be the cause of the debt.

SY TIONG SHIOU, JUANITA TAN SY, JOLIE ROSS TAN, ROMER TAN, CHARLIE TAN, and JESSIE JAMES TAN, *Petitioners,*
vs.
SY CHIM and FELICIDAD CHAN SY, *Respondents*.
G.R. No. 174168, SECOND DIVISION, March 30, 2009, Tinga, J.

FACTS:

Four criminal complaints were filed by Sy Chim and Felicidad Chan Sy (Spouses Sy) against Sy Tiong Shiou, Juanita Tan Sy, Jolie Ross Tan, Romer Tan, Charlie Tan and Jessie James Tan (Sy Tiong Shiou, et al.) before the City Prosecutor's Office of Manila. The cases were later consolidated. Two of the complaints, I.S. Nos. 03E-15285 and 03E-15286,3 were for alleged violation of Section 74 in relation to Section 144 of the Corporation Code. In these complaints, the Spouses Sy averred that they are stockholders and directors of Sy Siy Ho & Sons, Inc. (the corporation) who asked Sy Tiong Shiou, et al., officers of the corporation, to allow them to inspect the books and records of the business on three occasions to no avail. In a letter4 dated 21 May 2003, Sy Tiong Shiou, et al. denied the request, citing civil and intra-corporate cases pending in court.5

In the two other complaints, I.S. No. 03E-15287 and 03E-15288,6 Sy Tiong Shiou was charged with falsification under Article 172, in relation to Article 171 of the Revised Penal Code (RPC), and perjury under Article 183 of the RPC. According to the Spouses Sy, Sy Tiong Shiou executed under oath the 2003 General Information Sheet (GIS) wherein he falsely stated that the shareholdings of the Spouses Sy had decreased despite the fact that they had not executed any conveyance of their shares.7

Sy Tiong Shiou, et al. argued before the prosecutor that the issues involved in the civil case for accounting and damages pending before the RTC of Manila were intimately related to the two criminal complaints filed by the Spouses Sy against them, and thus constituted a prejudicial question that should require the suspension of the criminal complaints.

ISSUE:

Whether prejudicial question exist in the instant case

RULING:
A prejudicial question comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed since howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case. The reason behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.24

The civil action and the criminal cases do not involve any prejudicial question.

The civil action for accounting and damages, Civil Case No. 03-106456 pending before the RTC Manila, Branch 46, seeks the issuance of an order compelling the Spouses Sy to render a full, complete and true accounting of all the amounts, proceeds and fund paid to, received and earned by the corporation since 1993 and to restitute it such amounts, proceeds and funds which the Spouses Sy have misappropriated. The criminal cases, on the other hand, charge that the Spouses Sy were illegally prevented from getting inside company premises and from inspecting company records, and that Sy Tiong Shiou falsified the entries in the GIS, specifically the Spouses Sy's shares in the corporation. Surely, the civil case presents no prejudicial question to the criminal cases since a finding that the Spouses Sy mishandled the funds will have no effect on the determination of guilt in the complaint for violation of Section 74 in relation to Section 144 of the Corporation Code; the civil case concerns the validity of Sy Tiong Shiou's refusal to allow inspection of the records, while in the falsification and perjury cases, what is material is the veracity of the entries made by Sy Tiong Shiou in the sworn GIS.

JOSELITO R. PIMENTEL, *Petitioner*,
vs.
MARIA CHRYSANTINE L. PIMENTEL and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 172060, SECOND DIVISION, September 13, 2010, Carpio, J.

Annulment of marriage under Article 36 of the Family Code is not a prejudicial question in a criminal case for parricide.

FACTS:

On 25 October 2004, Maria Pimentel y Lacap(private respondent) filed an action for frustrated parricide against Joselito Pimentel (petitioner) before the Regional Trial Court of Quezon City.

On 7 February 2005, petitioner received summons to appear before the Regional Trial Court of Antipolo City for the pre-trial and trial of a civil case (Maria Pimentel v. Joselito Pimentel) for Declaration of Nullity of Marriage under Article 36 of the Family Code on the ground of psychological incapacity.

On 11 February 2005, petitioner filed an urgent motion to suspend the proceedings before the RTC Quezon City on the ground of the existence of a prejudicial question. Petitioner asserted that since the relationship between the offender and the victim is a key element in parricide, the outcome of the civil case would have a bearing in the criminal case filed against him before the RTC Quezon City.

The RTC Quezon City held that the pendency of the case before the RTC Antipolo is not a prejudicial question that warrants the suspension of the criminal case before it.

Petitioner filed a petition for certiorari with application for a writ of preliminary injunction and/or temporary restraining order before the Court of Appeals. However, The Court of Appeals ruled that even if the marriage between petitioner and respondent would be declared void, it would be immaterial to the criminal case because prior to the declaration of nullity, the alleged acts constituting the crime of frustrated parricide had already been committed.

ISSUE:

Whether the resolution of the action for annulment of marriage is a prejudicial question that warrants the suspension of the criminal case for frustrated parricide against petitioner.

RULING:

NO.
Section 7, Rule 111 of the 2000 Rules on Criminal Procedure provides that elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action and (b) the resolution of such issue determines whether or not the criminal action may proceed.

In the case at bar, the civil case for annulment was filed after the filing of the criminal case for frustrated parricide. As such, the requirement of Section 7, Rule 111 of the 2000 Rules on Criminal Procedure was not met since the civil action was filed subsequent to the filing of the criminal action. The relationship between the offender and the victim is a key element in the crime of parricide, which punishes any person "who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse." However, the issue in the annulment of marriage is not similar or intimately related to the issue in the criminal case for parricide. Further, the relationship between the offender and the victim is not determinative of the guilt or innocence of the accused.

The issue in the civil case for annulment of marriage under Article 36 of the Family Code is whether petitioner is psychologically incapacitated to comply with the essential marital obligations. The issue in parricide is whether the accused killed the victim. In this case, since petitioner was charged with frustrated parricide, the issue is whether he performed all the acts of execution which would have killed respondent as a consequence but which, nevertheless, did not produce it by reason of causes independent of petitioner's will. At the time of the commission of the alleged crime, petitioner and respondent were married. The subsequent dissolution of their marriage will have no effect on the alleged crime that was committed at the time of the subsistence of the marriage. In short, even if the marriage

between petitioner and respondent is annulled, petitioner could still be held criminally liable since at the time of the commission of the alleged crime, he was still married to respondent.

We cannot accept petitioner's reliance on Tenebro v. Court of Appeals that "the judicial declaration of the nullity of a marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the vinculum between the spouses is concerned x x x." First, the issue in Tenebro is the effect of the judicial declaration of nullity of a second or subsequent

marriage on the ground of psychological incapacity on a criminal liability for bigamy. There was no issue of prejudicial question in that case. Second, the Court ruled in Tenebro that "[t]here is x x x a recognition written into the law itself that such a marriage, although void ab initio, may still produce legal consequences." In fact, the Court declared in that case that "a declaration of the nullity of the second marriage on the ground of psychological incapacity is of absolutely no moment insofar as the State's penal laws are concerned."

FRANCISCO MAGESTRADO, *Petitioner*,
vs.
PEOPLE OF THE PHILIPPINES and ELENA M. LIBROJO, *Respondents*.
G.R. No. 148072, THIRD DIVISION, July 10, 2007, Chico-Nazario, *J.*

FACTS:

Private respondent Elena M. Librojo filed a criminal complaint for perjury against petitioner with the Office of the City Prosecutor of Quezon City, which was docketed as I.S. No. 98-3900.

After the filing of petitioners counter-affidavit and the appended pleadings, the Office of the City Prosecutor recommended the filing of an information for perjury against petitioner. Thus, Assistant City Prosecutor Josephine Z. Fernandez filed an information for perjury against petitioner with the Metropolitan Trial Court (MeTC) of Quezon City.

Petitioner filed a motion for suspension of proceedings based on a prejudicial question. Petitioner alleged that Civil Case No. Q-98-34349, a case for recovery of a sum of money pending before the Regional Trial Court (RTC) of Quezon City, Branch 84, and Civil Case No. Q-98- 34308, a case for Cancellation of Mortgage, Delivery of Title and Damages, pending before the RTC of Quezon City, Branch 77, must be resolved first before Criminal Case No. 90721 may proceed since the issues in the said civil cases are similar or intimately related to the issues raised in the criminal action.

ISSUE:

Whether Judge Estrella T. Estrada of the Regional Trial Court, Branch 83, Quezon City, had committed grave abuse of discretion amounting to lack or in excess of her jurisdiction in denying the Petition for Certiorari and petitioners subsequent motion for reconsideration on the ground of a prejudicial question pursuant to the Rules on Criminal Procedure and the prevailing jurisprudence.

RULING:

A perusal of the allegations in the complaints show that Civil Case No. Q-98-34308 pending before RTC-Branch 77, and Civil Case No. Q-98-34349, pending before RTC-Branch 84, are principally for the determination of whether a loan was obtained by petitioner from private respondent and whether petitioner executed a real estate mortgage involving the property covered by TCT No. N-173163. On the other hand, Criminal Case No. 90721 before MeTC-Branch 43, involves the determination of whether petitioner committed perjury in executing an affidavit of loss to support his request for issuance of a new owners duplicate copy of TCT No. N-173163.

It is evident that the civil cases and the criminal case can proceed independently of each other. Regardless of the outcome of the two civil cases, it will not establish the innocence or guilt of the petitioner in the criminal case for perjury. The purchase by petitioner of the land or his execution of

a real estate mortgage will have no bearing whatsoever on whether petitioner knowingly and fraudulently executed a false affidavit of loss of TCT No. N-173163.

MeTC-Branch 43, therefore, did not err in ruling that the pendency of Civil Case No. Q-98-34308 for cancellation of mortgage before the RTC-Branch 77; and Civil Case No. Q-98-34349 for collection of a sum of money before RTC-Branch 84, do not pose a prejudicial question in the determination of whether petitioner is guilty of perjury in Criminal Case No. 90721. RTC-Branch 83, likewise, did not err in ruling that MeTC-Branch 43 did not commit grave abuse of discretion in denying petitioners motion for suspension of proceedings in Criminal Case No. 90721.

SPOUSES BERNYL BALANGAUAN & KATHERENE BALANGAUAN, *Petitioners* – versus - THE HONORABLE COURT OF APPEALS, et al., *Respondents.*
G. R. No. 174350, THIRD DIVISION, August 13, 2008, CHICO-NAZARIO, *J.*

In requiring "hard facts and solid evidence" as the basis for a finding of probable cause to hold petitioners liable to stand trial, the DOJ disregards the definition of probable cause – that it is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.

FACTS:

HSBC filed a complaint for estafa and/or qualified estafa before the Office of the City Prosecutor against petitioner spouses. This is in connection with the account of Roger Dwayne York, one of HSBC's Premier clients, where petitioner Katherine made York sign transaction documents, which turned out to be cash movement tickets and withdrawal slips, for the purpose of investing York's money in a higher interest yielding time deposit, allegedly a "new product" of HSBC. After the preliminary investigation, the Assistant City Prosecutor recommended the dismissal of the complaint finding no probable cause. In a Resolution, the Secretary of DOJ dismissed HSBC's petition for review. The MR was likewise denied. HSBC went to the CA via a Petition for Certiorari under Rule 65, which was granted. The Resolutions of the DOJ were set aside and the filing of an information was ordered. Hence, the instant petition for certiorari under Rule 65.

ISSUE:

Whether there is probable cause against petitioners. (YES)

RULING:

The reasons of DOJ for affirming the dismissal of the criminal complaints for estafa and/or qualified estafa are determinative of whether it committed grave abuse of discretion amounting to lack or excess of jurisdiction. In requiring "hard facts and solid evidence" as the basis for a finding of probable cause to hold petitioners liable to stand trial, the DOJ disregards the definition of probable cause – that it is a reasonable ground of presumption that a matter is, or may be, well-founded, such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so. The DOJ reasoned as if no evidence was actually presented by respondent HSBC when in fact the records of the case were teeming; or it discounted the value of such substantiation when in fact the evidence presented was adequate to excite in a reasonable mind the probability that petitioners committed the crime/s

complained of. The DOJ gravely abused its discretion, rendering its resolutions amenable to correction and annulment by certiorari.

ATTY. ALLAN S. HILBERO, *Petitioner*, - versus - FLORENCIO A. MORALES, JR., *Respondent.*
G.R. No. 198760, FIRST DIVISION, January 11, 2017, JARDELEZA, *J.*

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge.

Acting DOJ Secretary De Vanadera, in her Resolution dated September 30, 2009, found probable cause to charge respondent for the murder of Demetrio based on eyewitness Reynaldo's credible narration of the circumstances surrounding the shooting of Demetrio and his positive identification of the culprits.

FACTS:

Four persons— Florencio, Primo, Pamplona and Sandy were suspects to the murder of Atty. Demetrio Hilbero. After preliminary investigation, the prosecutor recommended the filing of Informations against Primo and Pamplona. Demetrio's son, Atty. Allan Hilbero appealed before the DOJ to question the exclusion of Florencio and Sandy. The DOJ eventually directed the filing of informations against Primo and Pamplona. Hence, Florencio filed a petition for certiorari with the CA which granted the same.

ISSUE:

Whether there is probable cause. (YES)

RULING:

Respondent failed to establish that Acting DOJ Secretary De Vanadera committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in finding probable cause to charge him for the murder of Demetrio. In *Aguilar v. Department of Justice,* the Court laid down the guiding principles in determining whether the public prosecutor committed grave abuse of discretion in the exercise of his/her function:

A public prosecutor's determination of probable cause - that is, one made for the purpose of filing an information in court - is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of certiorari. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts

and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

Acting DOJ Secretary De Vanadera, in her Resolution dated September 30, 2009, found probable cause to charge respondent for the murder of Demetrio based on eyewitness Reynaldo's credible narration of the circumstances surrounding the shooting of Demetrio and his positive identification of the culprits. Aside from respondent's general and sweeping allegations, there was no basis for concluding that Secretary De Vanadera issued her Resolution dated September 30, 2009 capriciously, whimsically, arbitrarily, or despotically, by reason of passion and hostility, as to constitute abuse of discretion; and that such abuse of discretion was so patent and gross that it was tantamount to lack or excess of jurisdiction.

NIEVA M. MANEBO, *Petitioner,* - versus - SPO1 ROEL D. ACOSTA and NUMERIANO SAPIANDANTE, *Respondents.*
G.R. No. 169554, THIRD DIVISION, October 28, 2009, PERALTA, *J.*

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence to justify a conviction. In this case, we find that the DOJ committed a manifest error in finding no probable cause to charge respondents with the crime of murder.

FACTS:

Manebo filed a complaint for the murder of her sister Bernadette M. Dimatulac against respondents before the Special Action Unit (SAU) of the NBI. The SAU recommended the filing of a murder case against respondents and a certain John Doe, which was referred to the Office of the Chief State Prosecutor (OCSP), DOJ, for preliminary investigation. An information for murder was filed before the RTC. Respondents' MR was denied. They filed an appeal with the DOJ Secretary, which was granted.

The DOJ Secretary said that there was no probable cause to indict respondents. In reversing the findings of the prosecutor, the DOJ Secretary found that the police report prepared after the killing incident stated that the person seated beside the victim, who was watching television when shot, was Liza Gragasan. However, the DOJ Secretary continued that more than four months after the incident, a witness appeared in the person of Flordeliza Bagasan who claimed to be seated beside, and witnessed the actual shooting of, the victim. The DOJ Secretary found Flordeliza's description of respondent Acosta different from the latter's physical attributes. He then ruled that Flordeliza's delayed testimony, coupled with her erroneous description of respondent Acosta, cast a cloud of doubt on her credibility.

The DOJ Secretary also did not give credence to witness Sardia's testimony on respondent Sapiandante's participation in the incident. He found that Sardia was not among those mentioned in the police report, and that his testimony was likewise belatedly executed without any reason given

for such delay; that fear could not have been Sardia's reason, since in June 1998, he had already filed a complaint for attempted murder against respondent Sapiandante, which was later dismissed; and that Sardia did not witness the actual shooting of the victim.

The Prosecutor filed a Motion to Withdraw the information filed against respondents. Petitioner filed an appeal with the Office of the President (OP) which was dismissed. After the denial of her MR, petitioner filed a petition for certiorari under Rule 43 with the CA, which was also dismissed.

ISSUE:

Whether there is probable cause to charge the respondents for the crime of murder. (YES)

RULING:

Ordinarily, the determination of probable cause is not lodged with this Court. Its duty in an appropriate case is confined to the issue of whether the executive or judicial determination, as the case may be, of probable cause was done without or in excess of jurisdiction or with abuse of discretion amounting to want of jurisdiction. However, this Court may ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice. We find that the present case warrants the application of the exception.

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence to justify a conviction.

To determine the existence of probable cause, there is a need to conduct a preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. Its purpose is to determine whether (a) a crime has been committed; and (b) there is probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be reasonably charged with a crime.

In this case, we find that the DOJ committed a manifest error in finding no probable cause to charge respondents with the crime of murder.

While the initial police report stated that the name of the person who was seated beside the victim when the latter was shot was Liza Gragasan, such report would not conclusively establish that Liza Gragasan could not have been Flordeliza Bagasan, the witness who executed an affidavit four months after the incident. Notably, Flordeliza's nickname is Liza, and her surname Bagasan sounds similar to Gragasan. Under the rule of idem sonans, two names are said to be "idem sonantes" if the attentive ear finds difficulty in distinguishing them when pronounced. The question whether a name sounds the same as another is not one of spelling but of pronunciation. While the surname Bagasan was incorrectly written as Gragasan, when read, it has a sound similar to the surname Bagasan. Thus, the presence of Bagasan at the crime scene was established, contrary to the conclusion arrived at by the DOJ Secretary.

The execution of Bagasan's affidavit four months after the incident should not be taken against her, as such reaction is within the bounds of expected human behavior. Notably, the police report stated that during the conduct of the investigation, Bagasan was shocked after the incident and could not possibly be interviewed. Initial reluctance to volunteer information regarding a crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility. Bagasan's action revealed a spontaneous and natural reaction of a person who had yet to fully comprehend a shocking and traumatic event. Besides, the workings of the human mind are unpredictable. People react differently to emotional stress. There is simply no standard form of behavioral response that can be expected from anyone when confronted with a strange, startling or frightful occurrence.

ROBERTO B. KALALO, *Petitioner,* – versus - OFFICE OF THE OMBUDSMAN, et al., *Respondent.*
G.R. No. 158189, THIRD DIVISION, April 23, 2010, PERALTA, *J.*

The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. The Office of the Ombudsman did not find probable cause that would warrant the filing of Information against respondents. Unless it is shown that the questioned acts were done in grave abuse of discretion amounting to lack or excess of jurisdiction, the Court will not interfere in the findings of probable cause determined by the Ombudsman.

FACTS:

Kalalo, an employee of Pablo Borbon Memorial Institute of Technology (PBMIT), now Batangas State University, filed a Complaint Affidavit for falsification of public documents and violations of RA 3019 with the Office of the Ombudsman against the officials of the said school. Respondents, for their part, filed their CounterAffidavit denying the allegations of petitioner. The Office of the Deputy Ombudsman dismissed the complaint, finding no probable cause in the charges filed against respondents. Petitioner filed a motion for reconsideration, but it was denied. Hence, the present petition for certiorari via Rule 65.

ISSUE:

Whether probable cause exists against respondents. (NO)

RULING:

The Office of the Ombudsman did not find probable cause that would warrant the filing of Information against respondents. The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. Unless it is shown that the questioned acts were done in grave abuse of discretion amounting to lack or excess of jurisdiction, the Court will not interfere in the findings of probable cause determined by the Ombudsman.

IRIS KRISTINE BALOIS ALBERTO and BENJAMIN D. BALOIS, *Petitioners,* - versus - THE HON. COURT OF APPEALS, et al., *Respondent.*
G.R. Nos. 182130 & 182132, SECOND DIVISION, June 19, 2013, PERLAS-BERNABE, *J.*

Accordingly, probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged

The DOJ Secretary did not gravely abuse his discretion in finding that probable cause exists for the crime of rape against Gil, Atty. Reyna and Arturo, as the elements of rape appear to be present. However, the DOJ Secretary gravely abused his discretion in finding that probable cause exists for the crime of Serious Illegal Detention as records are bereft of any evidence to support a finding that Iris was illegally detained or restrained of her movement.

FACTS:

On separate occasions, Gil Anthony Calianga allegedly raped Iris Kristine Alberto, who was then a minor. On another incident, it was alleged that respondents abducted Iris through force and intimidation. Respondents raised the sweetheart defense and consent on the part of Iris. The Prosecutor dismissed all the charges against respondents, except the charge of Child Abuse against respondent Gil for having sexual intercourse with Iris by taking advantage of her minority and his moral influence as a pastor of their church.

On appeal, the DOJ Secretary found probable cause to charge: (a) Gil for Rape, in relation to Section 5(b), Article III of RA 7610; (b) Gil, Jessebel, Atty. Reyna and Grace for one (1) count each of Serious Illegal Detention and Rape, in relation to Section 5(b), Article III of RA 7610; and (c) Gil, Atty. Reyna and Arturo for one (1) count each of Forcible Abduction with Rape. However, these were revoked by the CA when it granted respondents' petition for certiorari.

ISSUE:

Whether there is probable cause to charge respondents of the crimes

RULING:

Yes, as to the crime of rape. No, as to the other crimes.

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution "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."

To note, probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. It does not mean "actual and positive cause" nor does it import absolute certainty. Rather, it is merely based on opinion and reasonable belief. Accordingly, probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged

The DOJ Secretary did not gravely abuse his discretion in finding that probable cause exists for the crime of rape against Gil, Atty. Reyna and Arturo, as the elements of rape appear to be present. However, the DOJ Secretary gravely abused his discretion in finding that probable cause exists for the crime of Serious Illegal Detention as records are bereft of any evidence to support a finding that Iris was illegally detained or restrained of her movement. The DOJ Secretary likewise committed grave abuse of discretion in finding probable cause for the crime of Forcible Abduction with Rape as there was no evidence to prove that Iris was restrained of her liberty. Even if it is assumed that there was some form of abduction, it has not been shown – nor even sufficiently alleged – that the taking was done with lewd designs.

P/C INSP. LAWRENCE B. CAJIPE, et al., *Petitioner,* – versus - PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 203605, THIRD DIVISION, April 23, 2014, ABAD, *J.*

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial. The prosecution evidence fails to establish probable cause against petitioner HPG officers.

FACTS:

Lilian De Vera's husband, Alfonso "Jun" De Vera and their 7-year-old daughter, Lia Allana, were killed in a shootout in their subdivision. Lilian filed a complaint for multiple murder against the petitioner officers of the PNP Highway Patrol Group before the DOJ. After preliminary investigation, the DOJ found probable cause to indict all the police officers involved in the police action that led to the shooting of Jun and Lia for two counts of murder. The DOJ then filed the information before the RTC. Petitioner HPG officers filed an omnibus motion for judicial determination of probable cause and sought the annulment of the DOJ resolution on the ground of violation of their constitutional rights. Further, they asked that the information be quashed on the ground that the facts it alleged did not constitute an offense.

The RTC dismissed the case against petitioner HPG officers for lack of probable cause against them. The OSG challenged the dismissal of RTC. The OSG relies on the affidavits of Indiana and Ronald V. Castillo (Castillo) in claiming that probable cause exists against petitioner HPG officers.

In the sworn statement he made before the police on December 9, 2008 Indiana said: "x x x. Tapos narinig ko ang sigaw 'Bro ang driver tumakas andyan sa jeep, duon nilapitan ng isang naka-Vest na meron pangalan sa likod RSAF at nakabunet at pinutukan ang driver sa ulo. Tapos nagsalita ang nagsabing RSAF 'Bro may bata pala.' Kinuha ng RSAF ang bata at dinala sa kanilang sasakyan na kulay puti ng sasakyan. x x x."

On the other hand, witness Castillo said in his sworn statement: "x x x. May dumaang sasakyang

papuntang gate ng UPS JV, mayroong sumigaw na mga pulis 'PLATIN NYO, PLATIN NYO.' Biglang hinabol ng dalawang pulis ang nasabing sasakyan at pinagbabaril. May ilang sandali ay bumalik ang dalawang pulis at sinabi nila ng 'NAPATAY NA NAMIN ANG DRIVER NG GATE A WAY CAR, ANDOON SA TABI NGJEEP'.

ISSUE:

Whether probable cause exists against petitioner HPG officers. (NO)

RULING:

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof and should be held for trial. The prosecution evidence fails to establish probable cause against petitioner HPG officers.

It is clear from Indiana's testimony that the man he saw shoot Jun was an RSAF officer, identified by his assault vest and accompanied by another RSAF officer who also wore such a vest. Castillo did not see the act of shooting but confirmed that two police officers gave chase and took shots at the fleeing vehicle then turned back to announce to their companions that they had killed the driver of the get-away car. The HPG men belonged to another unit and there is no claim that they wore another unit's vest. More telling is the crime laboratory report which revealed that none of the HPG operatives discharged their firearms during the shootout. Per Indiana's testimony, the SAF police officers involved in the shootout carried long firearms. But the National Police Commission issued two certifications dated January 14 and 19, 2010 to the effect that the petitioner HPG officers had not been issued long firearms from 2007 up to 2010.

LIGAYA P. CRUZ, *Petitioner,* – versus - HON. RAUL M. GONZALEZ, et al., *Respondents.*
G.R. No. 173844, SECOND DIVISION, April 11, 2012, PEREZ, J.

[A] finding probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

In the instant case, the Secretary of Justice found sufficient evidence to indict petitioner. It was adequately established by DBP and found by the Secretary of Justice that the funds would not have been released pursuant to the subsidiary loan agreement if HSLBI had no sub-borrowers/Investment Enterprises to speak of

FACTS:

Hermosa Savings and Loans Bank, Inc. (HSLBI) availed of 40 loans from the Development Bank of the Philippines (DBP) pursuant to a Subsidiary Loan Agreement. HSLBI, through its bank officers and legal counsel, petitioner Atty. Ligaya P. Cruz, submitted the required documents to support the loan agreements and applications. However, the BSP found the said documents to be forged or inexistent. Upon a complaint filed by DBP, the State Prosecutors recommended the filing of informations for 40 counts of estafa against respondent bank officers and petitioner. The respondents in the complaint,

including petitioner, filed a petition for review before the DOJ, which was dismissed. On reconsideration, the DOJ dismissed the complaint against petitioner for lack of probable cause while the filing of information against the bank officers was affirmed. DBP filed a motion for reconsideration. The Acting Secretary ordered the filing of informations for Estafa/Large Scale Fraud against respondents and Atty. Cruz. Respondents and petitioner moved for reconsideration, which was granted. The informations filed against them were for 40 counts of estafa and not for large scale. Atty. Cruz filed a petition for certiorari under Rule 65, which was dismissed.

ISSUE:

Whether there is probable cause to indict Atty. Ligaya Cruz. (YES)

RULING:

Jurisprudence has established rules on the determination of probable cause. In the case of *Galario v. Office of the Ombudsman*, this Court held that:

> xxx. [A] finding probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.
>
> The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.

We affirm the CA decision in line with the principle of non-interference with the prerogative of the Secretary of Justice to review the resolutions of the public prosecutor in the determination of the existence of probable cause. For reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations. In the absence of any showing that the Secretary of Justice committed manifest error, grave abuse of discretion or prejudice, courts will not disturb its findings. Moreover, this Court will decline to interfere when records show that the findings of probable cause is supported by evidence, law and jurisprudence.

In the instant case, the Secretary of Justice found sufficient evidence to indict petitioner. It was adequately established by DBP and found by the Secretary of Justice that the funds would not have been released pursuant to the subsidiary loan agreement if HSLBI had no sub-borrowers/Investment Enterprises to speak of. As it turned out, not only were the collaterals submitted inexistent, all the purported sub-borrowers/Investment Enterprises were also fictitious and inexistent. In fact, the signatures of the sub-borrowers and the supporting documents submitted to DBP by petitioner and her co-respondents were all forged. The findings of probable cause against petitioner was based on the document she issued entitled "Opinion of Counsel to the Participating Financial Institution,"

CENTURY CHINESE MEDICINE CO., et al., *Petitioner,* - versus - PEOPLE OF THE PHILIPPINES and LING NA LAU, *Respondent.*
G.R. No. 188526, THIRD DIVISION, November 11, 2013, PERALTA, *J.*

A core requisite before a warrant shall validly issue is the existence of a probable cause, meaning "the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched." And when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present.

The requisites for the issuance of the search warrants had been complied with and there is probable cause to believe that an offense had been committed and that the objects sought in connection with the offense were in the places to be searched. The offense pertains to the alleged violations committed by petitioners upon the intellectual property rights of private complainant who had the authority to enforce and protect her intellectual property rights over it.

FACTS:

Upon the complaint filed by respondent Ling Na Lau, the NBI conducted an investigation wherein they confirmed that petitioner drugstores were selling counterfeit whitening papaya soaps bearing the general appearance of respondent's products. The RTC issued search warrants against petitioners for unfair competition and trademark infringement. Petitioners collectively filed their Motion to Quash the Search Warrants. During the pendency of the case, the parties entered into a Compromise Agreement, which was approved by the court. Subsequently, the RTC sustained the Motion to Quash as the search warrants were not supported by probable cause. On appeal, the CA reversed the quashal of the search warrants.

ISSUE:

Whether there is exist probable cause to support the search warrants. (YES)

RULING:

A core requisite before a warrant shall validly issue is the existence of a probable cause, meaning "the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched." And when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present. Absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, its issuance being, in legal contemplation, arbitrary. The determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man, not the exacting calibrations of a judge after a full-blown trial.

The affidavits of NBI Agent Furing and his witnesses, Esmael and Ling, clearly showed that they are seeking protection for the trademark "TOP GEL T.G. and DEVICE OF A LEAF" registered to respondent under Certificate of Registration 4-2000-009881 issued by the IPO on August 24, 2003, and no other. While petitioners claim that the product, they are distributing was owned by Yu with the trademark

TOP GEL MCA and MCA DEVISE under Certificate of Registration 4-1996-109957, it was different from the trademark TOP GEL T.G. and DEVICE OF A LEAF subject of the application.

The requisites for the issuance of the search warrants had been complied with and there is probable cause to believe that an offense had been committed and that the objects sought in connection with the offense were in the places to be searched. The offense pertains to the alleged violations committed by petitioners upon the intellectual property rights of private complainant who had the authority to enforce and protect her intellectual property rights over it. This prompted her to request for assistance from the agents of the NBI, who conducted a series of investigation, test buys and inspection regarding the alleged trademark infringement by petitioners. Private complainant's representative, issued a certification with the finding that the examined goods were counterfeit. This prompted the NBI agents to apply for the issuances of search warrants against the petitioners. Said applications for the search warrants were granted after by Judge Laguilles after examining under oath the applicant Agent Furing of the NBI and his witnesses.

PEOPLE OF THE PHILIPPINES, *Petitioner,* – versus - JESSIE B. CASTILLO and FELICITO R. MEJIA, *Respondent.*
G.R. No. 171188, SECOND DIVISION, June 19, 2009, QUISUMBING, J.

There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. This function properly pertains to the public prosecutor who is given broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused.

As the amended information was valid on its face and there is no manifest error or arbitrariness on the part of the Ombudsman, the Sandiganbayan erred in making an executive determination of probable cause when it overturned the Ombudsman's own determination.

FACTS:

The municipality of Bacoor ordered the closure of the stalls being occupied by the complainants through the installation of iron fences for violations of National Building Code. Complainants filed before the Office of the Ombudsman a complaint against respondents for violation of RA 3019. The case was dismissed on the ground that the respondent local officials acted in good faith in effecting the closure of the stalls.

The complainants alleged that the construction of the galvanized fence was tantamount to an unlawful taking of their property causing them undue injury. They filed another complaint before the Office of the Ombudsman charging respondents criminally for violation of RA 3019 and RA 6713, and administratively for oppression, grave misconduct and for committing acts contrary to law. The Ombudsman dismissed the administrative complaint for being moot and academic due to Castillo's re-election as mayor. Nonetheless, the Office of the Ombudsman filed an information against respondents for violation of Section 3(e) of RA 3019 before the Sandiganbayan which found probable cause against respondents and directed the issuance of the corresponding warrants of arrest. Respondents voluntarily surrendered to the Sandiganbayan and posted their respective bonds. Respondents moved for the reinvestigation of the case which the Sandiganbayan gave due course. Upon motion, the Sandiganbayan admitted the Amended Information but denied the Motion for

Judicial Determination of Probable Cause. On motion for reconsideration, the Sandiganbayan reversed its previous ruling and dismissed the case.

ISSUE:

Whether the Sandiganbayan erred in overturning the Ombudsman's determination of probable cause. (YES)

RULING:

The executive determination of probable cause is one made during preliminary investigation. This function properly pertains to the public prosecutor who is given broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. He has the quasi-judicial authority to determine whether a criminal case must be filed in court. Whether that function has been correctly discharged by the public prosecutor, i.e., whether he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself may not be compelled to pass upon. The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

Both the original and amended informations were valid on their face because they complied with Section 6, Rule 110 of the Rules of Court. A scrutiny of the Resolution of the Ombudsman which precipitated the filing of the original information and the subsequent Memorandum recommending the amendment of the information would likewise show that the finding of probable cause against the respondents were sufficiently supported by substantial evidence. As the amended information was valid on its face and there is no manifest error or arbitrariness on the part of the Ombudsman, the Sandiganbayan erred in making an executive determination of probable cause when it overturned the Ombudsman's own determination.

HUBERT WEBB, *Petitioner,* - versus - HON. RAUL E. DE LEON et al., *Respondents.*
G.R. Nos. 121234, 121245 & 121297, SECOND DIVISION, August 23, 1995, PUNO, *J.*

As well put in Brinegar v. United States, while probable cause demands more than "bare suspicion," it requires "less than evidence which would justify . . . conviction." A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

Considering the low quantum and quality of evidence needed to support a finding of probable cause, we also hold that the DOJ Panel did not, gravely abuse its discretion in refusing to call the NBI witnesses for clarificatory questions.

FACTS:

The NBI filed with the DOJ a complaint against Hubert Webb, et al. with the crime of Rape and Homicide of Carmela Vizconde, Esterllita Nicolas-Vizconde and Anne Marie Jennifer Vizconde. The DOJ formed a panel of prosecutors to conduct the preliminary investigation. The DOJ panel found

probable cause. Respondent judge issued warrants of arrest against them. Petitioners assail the DOJ panel's findings, raising the poor credibility of witness Jessica Alfaro as there were inconsistencies in her testimonies. Petitioners further criticized the procedure followed by the DOJ Panel. They claim that Judge de Leon issued warrants of arrest against them without conducting the required preliminary examination.

ISSUE:

Whether probable cause was properly established. (YES)

RULING:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt. As well put in *Brinegar v. United States*, while probable cause demands more than "bare suspicion," it requires "less than evidence which would justify . . . conviction." A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

Considering the low quantum and quality of evidence needed to support a finding of probable cause, we also hold that the DOJ Panel did not, gravely abuse its discretion in refusing to call the NBI witnesses for clarificatory questions. The decision to call witnesses for clarificatory questions is addressed to the sound discretion of the investigator and the investigator alone. If the evidence on hand already yields a probable cause, the investigator need not hold a clarificatory hearing. To repeat, probable cause merely implies probability of guilt and should be determined in a summary manner. Preliminary investigation is not a part of trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence. In the case at bar, the DOJ Panel correctly adjudged that enough evidence had been adduced to establish probable cause and clarificatory hearing was unnecessary.

ROBERTSON CHIANG, NIKKIA CHIANG, MARA CHIANG, BEN JAVELLANA AND CARMELITA TUAson, *Petitioners* – versus - PHILIPPINE LONG DISTANCE COMPANY, *Respondent.*
G.R. No. 196679, First Division, December 13, 2017, JARDELEZA, *J.*

A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the act or omission complained of constitutes the offense charged. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A trial is intended precisely for the reception of prosecution evidence in support of the charge. The court is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits.

The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level. By taking into consideration the defenses raised by petitioners, the OCP Pasig already went into the strict merits of the case.

FACTS:

Petitioners in this case were charged with theft and violation of P.D. 401. The test calls made by PLDT revealed that they were able to complete international calls, which were made to appear as local calls and were not recorded in the Call Details Records of PLDT's toll exchanges. This deprived PLDT of the appropriate charges due them.

The Office of the City Prosecutor dismissed the charges against petitioners and filed a motion to withdraw the informations before the RTC. The OCP Pasig gave credence to Planet Internet's defense that it was authorized by Eastern and Capwire to resell their telecommunication service by connecting clients directly to either Eastern's or Capwire's IGF switching facility. Thus, while the international test calls made through Planet Internet by the representatives of PLDT did not pass to its IGF, these test calls, however, passed through Eastern and Capwire.

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ISSUE:

Whether there exists probable cause. (YES)

RULING:

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction.

A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the act or omission complained of constitutes the offense charged. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A trial is intended precisely for the reception of prosecution evidence in support of the charge. The court is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits.

In this case, the OCP readily accepted the defenses of petitioner as against the allegations of PLDT. These counter-allegations, however, delve on evidentiary matters that are best passed upon in a full-blown trial. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level. By taking into consideration the defenses raised by petitioners, the OCP Pasig already went into the strict merits of the case.

HONESTO GENERAL, *Petitioner*, vs. HON. GRADUACION REYES CLARAVALL, Judge, Regional Trial Court at Pasig, Br. 71, BENNETH THELMO and the PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 96724, EN BANC, March 22, 1991, NARVASA, *J.*

In any event, the Court now makes that intent plainer, and in the interests of clarity and certainty, categorically declares for the guidance of all concerned that when a civil action is deemed impliedly instituted with the criminal in accordance with Section 1, Rule 111 of the Rules of Court-because the offended party has NOT waived the civil action, or reserved the right to institute it separately, or instituted the civil action prior to the criminal action-the rule is as follows:
1) when "the amount of damages, other than actual, is alleged in the complaint or information" filed in court, then "the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial;"
2) in any other case, however-i.e., when the amount of damages is not so alleged in the complaint or information filed in court, the corresponding filing fees need not be paid and shall simply "constitute a first lien on the judgment, except in an award for actual damages.

FACTS:

Benneth Thelmo filed with the Office of the Public Prosecutor of Rizal a sworn complaint accusing Honesto General and another person of libel, and alleged that by reason of the offense he (Thelmo) had suffered actual, moral and exemplary damages in the total sum of P100 million. The information for libel subsequently filed with the RTC at Pasig, after preliminary investigation, did not however contain any allegation respecting the damages due the offended party. At the trial, the defense raised the issue of non-payment of the docket fees corresponding to the claim of damages contained in Thelmo's sworn complaint before the fiscal, as a bar to Thelmo's pursuing his civil action therefor. The trial Court overruled the objection. It also denied the defendants' motion for reconsideration and motion for suspension of proceedings. The General and his co-accused are now before this Court applying for a writ of *certiorari* to annul the aforesaid Orders of the Trial Court on the theory that they had been rendered with grave abuse of discretion.

ISSUE: Whether or not the trial court committed grave abuse of discretion. (NO)

RULING:

Manchester laid down the doctrine the specific amounts of claims of damages must be alleged both in the body and the prayer of the complaint, and the filing fees corresponding thereto paid at the time of the filing of the complaint; that if these requisites were not fulfilled, jurisdiction could not be acquired by the trial court; and that amendment of the complaint could not "thereby vest jurisdiction upon the Court." *Sun Insurance* and *Tacay* affirmed the validity of the basic principle but reduced its stringency somewhat by providing that only those claims as to which the amounts were not specified would be refused acceptance or expunged and that, in any case, the defect was not necessarily fatal of irremediable as the plaintiff could on motion be granted a reasonable time within which to amend his complaint and pay the requisite filing fees, unless in the meantime the period of limitation of the right of action was completed. xxx

This Court's plain intent-to make the *Manchester* doctrine, requiring payment of filing fees at the time of the commencement of an action applicable to impliedly instituted civil actions under Section 1,

Rule 111 *only when "the amount of damages, other than actual, is alleged in the complaint or information*-has thus been made manifest by the language of the amendatory provisions.

In any event, the Court now makes that intent plainer, and in the interests of clarity and certainty, categorically declares for the guidance of all concerned that when a civil action is deemed impliedly instituted with the criminal in accordance with Section 1, Rule 111 of the Rules of Court-because the offended party has NOT waived the civil action, or reserved the right to institute it separately, or instituted the civil action prior to the criminal action-the rule is as follows:
1) when "the amount of damages, other than actual, is alleged in the complaint or information" filed in court, then "the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial;"
2) in any other case, however-*i.e.*, when the amount of damages is not so alleged in the complaint or information filed in court, the corresponding filing fees need not be paid and shall simply "constitute a first lien on the judgment, except in an award for actual damages.

LEE PUE LIONG A.K.A. PAUL LEE, *Petitioner*, v. CHUA PUE CHIN LEE, *Respondent*.
G.R. No. 181658, FIRST DIVISION, August 07, 2013, VILLARAMA, JR., *J.*

Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "[e]very person criminally liable x x x is also civilly liable." Underlying this legal principle is the traditional theory that when a person commits a crime, he offends two entities, namely (1) the society in which he lives in or the political entity, called the State, whose law he has violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission.

In this case, the statement of petitioner regarding his custody of TCT No. 232238 covering CHI's property and its loss through inadvertence, if found to be perjured is, without doubt, injurious to respondent's personal credibility and reputation insofar as her faithful performance of the duties and responsibilities of a Board Member and Treasurer of CHI. The potential injury to the corporation itself is likewise undeniable as the court-ordered issuance of a new owner's duplicate of TCT No. 232238 was only averted by respondent's timely discovery of the case filed by petitioner in the RTC

FACTS:

Lee Pue Liong aka Paul Lee, is the President of Centillion Holdings, Inc. (CHI), a company affiliated with the CKC Group of Companies (CKC Group)) which includes the pioneer company Clothman Knitting Corporation (CKC). CKC Group is the subject of intra-corporate disputes between paul Lee and his siblings, including Chua Pue Chin Lee, a majority stockholder and Treasurer of CHI.

Paul Lee's siblings with Chua Lee and other persons took over and barricaded themselves inside the premises of a factory owned by CKC. Paul Lee and other factory employees were unable to enter the factory premises. This resulted to filing of (3) Criminal Cases against Nixon Lee, Andy Lee Chua Kipso and Chua Lee, which are now pending in courts.

Paul Lee on behalf of CHI caused the filing of a petition for the Issuance of a TCT which covers a property owned by CHI. Paul Lee submitted an Affidavit of Loss stating that said TCT was inadvertently lost or misplaced from his files and he discovered such loss in May 1999 but it had not been found and is already beyond recovery. Said title had not been the subject of mortgage or used as collateral for payment of any obligation with any person.

RTC: granted the petition and a new TCT has been issued.

Chua Lee, joined by her brother Nixon Lee filed a petition asking for the RTC order that granted a new TCT to be set aside claiming that Paul Lee knew fully well that Chua Lee was in possession of the said TCT as she was the corporate treasurer at the time. Chua Lee posits that Paul Lee merely needs to have another TCT as he was planning to mortgage the same with Planters Development Bank.

RTC: recalled and set aside its order.

Chua Lee filed a complaint-affidavit stating among others, that Paul Lee made a willful and deliberate assertion of falsehood in his verified petition, affidavit and testimony as he perfectly knew that she was in possession of the TCT.

Through a Supplemental Affidavit, Chua Lee clarified that she was accusing Paul Lee of PERJURY. The Investigating Prosecutor recommended dismissal of the case. However, upon review, First Assistant City Prosecutor dismissed the recommendation of dismissal. The City Prosecutor filed Information for perjury

At the trial, Atty. Augusto Macam appeared as counsel for Chua Lee and as private prosecutor with the consent and under the control and supervision of the public prosecutor.

Paul Lee argued that under Article 183 of the RPC, there is no mention of any private offended party. As such, a private prosecutor cannot intervene for the prosecution of the case.

"Perjury is a crime against public interest as provided under the RPC, where the offended party is the State alone. There being no allegation of damage to private interests, a private prosecutor is not needed."

MeTC: denied the motion stating that "an offended party may intervene in the proceeding, personally or by attorney, in cases of offenses which cannot be prosecuted except at the instance of the offended party. The only exception to this rule is when the offended party waives his right to file civil action or expressly reserves his right to institute it after the termination of the case..."

Paul Lee appealed to the Court of Appeals.

CA: In favor of Chua Lee.
The presence of the private prosecutor who was under the control and supervision of the public prosecutor during the criminal proceedings of the two perjury cases is not proscribed by the rules. Chua Lee is no stranger to the perjury case as she is the private complainant therein, hence, an aggrieved party.

Motion for Reconsideration denied. Hence this, petition.

ISSUE:

1) WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT UPHELD THE RESOLUTION OF THE METROPOLITAN TRIAL COURT THAT THERE IS A PRIVATE OFFENDED PARTY IN THE CRIME OF PERJURY, A CRIME AGAINST PUBLIC INTEREST. (NO)

2) WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT UPHELD THE RESOLUTIONS OF THE *LOWER COURT* WHICH IN TURN UPHELD THE RIGHT OF RESPONDENT, AN ALLEGED STOCKHOLDER OF CHI, TO INTERVENE IN THE CRIMINAL CASE FOR PERJURY AS PRIVATE COMPLAINANT ON BEHALF OF THE CORPORATION WITHOUT ITS AUTHORITY. (NO)

RULING:

The petition has no merit.

I. Generally, the basis of civil liability arising from crime is the fundamental postulate of our law that "[e]very person criminally liable x x x is also civilly liable." Underlying this legal principle is the traditional theory that when a person commits a crime, he offends two entities, namely (1) the society in which he lives in or the political entity, called the State, whose law he has violated; and (2) the individual member of that society whose person, right, honor, chastity or property was actually or directly injured or damaged by the same punishable act or omission.

Section 1, Rule 111 of the Revised Rules of Criminal Procedure, as amended, provides:

SECTION 1. Institution of criminal and civil actions.—(a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. x x x x (Emphasis supplied)

For the recovery of civil liability in the criminal action, the appearance of a private prosecutor is allowed under Section 16 of Rule 110:

SEC. 16. Intervention of the offended party in criminal action.—Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense. (Emphasis supplied.)

Section 12, Rule 110 of the Revised Rules of Criminal Procedure, as amended, defines an offended party as "the person against whom or against whose property the offense was committed." In Garcia v. Court of Appeals, this Court rejected petitioner's theory that it is only the State which is the offended party in public offenses like bigamy. We explained that from the language of Section 12, Rule 10 of the Rules of Court, it is reasonable to assume that the offended party in the commission of a crime, public or private, is the party to whom the offender is civilly liable, and therefore the private individual to whom the offender is civilly liable is the offended party. xxx

In this case, the statement of petitioner regarding his custody of TCT No. 232238 covering CHI's property and its loss through inadvertence, if found to be perjured is, without doubt, injurious to respondent's personal credibility and reputation insofar as her faithful performance of the duties and responsibilities of a Board Member and Treasurer of CHI. The potential injury to the corporation itself is likewise undeniable as the court-ordered issuance of a new owner's duplicate of TCT No. 232238 was only averted by respondent's timely discovery of the case filed by petitioner in the RTC.

II. When the civil action is instituted with the criminal action, evidence should be taken of the damages claimed and the court should determine who are the persons entitled to such indemnity. The civil liability arising from the crime may be determined in the criminal proceedings if the offended party does not waive to have it adjudged or does not reserve the right to institute a separate civil action against the defendant. Accordingly, **if there is no waiver or reservation of civil liability, evidence should be allowed to establish the extent of injuries suffered**.
In the case before us, there was neither a waiver nor a reservation made; nor did the offended party institute a separate civil action. It follows that evidence should be allowed in the criminal proceedings to establish the civil liability arising from the offense committed, and the private offended party has the right to intervene through the private prosecutors.

In the light of the foregoing, we hold that the CA did not err in holding that the MeTC committed no grave abuse of discretion when it denied petitioner's motion to exclude Atty. Macam as private prosecutor in Crim. Case Nos. 352270-71 CR.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, v. GILBERT REYES WAGAS, Accused-*Appellant*.
G.R. No. 157943, FIRST DIVISION, September 04, 2013, BERSAMIN, *J*.

It is a fundamental rule in criminal procedure that the State carries the onus probandi in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet ei incumbit probation, qui dicit, non qui negat, which means that he who asserts, not he who denies, must prove,[40] and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime.
xxx

There is no question that an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force. Thus, considering that the circumstances of the identification of Wagas as the person who transacted on the rice did not preclude a reasonable possibility of mistake, the proof of guilt did not measure up to the standard of proof beyond reasonable doubt demanded in criminal cases. Perforce, the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, and he is entitled to an acquittal, even though his innocence may be doubted.

FACTS:

Wagas was charged with estafa under the information. After Wagas entered a plea of not guilty, the pre-trial was held, during which the Defense admitted that the check alleged in the information had been dishonored due to insufficient funds. On its part, the Prosecution made no admission.

RTC: The RTC convicted Wagas of estafa on July 11, 2002. RTC denied the motion for new trial and/or reconsideration, opining that the evidence Wagas desired to present at a new trial did not qualify as newly discovered, and that there was no compelling ground to reverse its decision.
Wagas appealed directly to this Court by notice of appeal.

ISSUE:

Whether or not the Prosecution establish beyond reasonable doubt the existence of all the elements of the crime of *estafa* as charged, as well as the identity of the perpetrator of the crime. (NO)

RULING:

The appeal is meritorious.
Article 315, paragraph 2(d) of the Revised Penal Code, as amended, provides:
Article 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud x x x x

(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.

In order to constitute estafa under this statutory provision, the act of postdating or issuing a check in payment of an obligation must be the efficient cause of the defraudation. This means that the offender must be able to obtain money or property from the offended party by reason of the issuance of the check, whether dated or postdated. In other words, the Prosecution must show that the person to whom the check was delivered would not have parted with his money or property were it not for the issuance of the check by the offender.

The essential elements of the crime charged are that: (a) a check is postdated or issued in payment of an obligation contracted at the time the check is issued; (b) lack or insufficiency of funds to cover the check; and (c) damage to the payee thereof.26 It is the criminal fraud or deceit in the issuance of a check that is punishable, not the non-payment of a debt.27Prima facie evidence of deceit exists by law upon proof that the drawer of the check failed to deposit the amount necessary to cover his check within three days from receipt of the notice of dishonor.

The Prosecution established that Ligaray had released the goods to Cañada because of the postdated check the latter had given to him; and that the check was dishonored when presented for payment because of the insufficiency of funds.

In every criminal prosecution, however, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. In that regard, the Prosecution did not establish beyond reasonable doubt that it was Wagas who had defrauded Ligaray by issuing the check. xxx

Ligaray's declaration that it was Wagas who had transacted with him over the telephone was not reliable because he did not explain how he determined that the person with whom he had the telephone conversation was really Wagas whom he had not yet met or known before then. We deem it essential for purposes of reliability and trustworthiness that a telephone conversation like that one Ligaray supposedly had with the buyer of rice to be first authenticated before it could be received in evidence. Among others, the person with whom the witness conversed by telephone should be first satisfactorily identified by voice recognition or any other means. Without the authentication, incriminating another person just by adverting to the telephone conversation with him would be all too easy. In this respect, an identification based on familiarity with the voice of the caller, or because of clearly recognizable peculiarities of the caller would have sufficed. The identity of the caller could

also be established by the caller's self-identification, coupled with additional evidence, like the context and timing of the telephone call, the contents of the statement challenged, internal patterns, and other distinctive characteristics, and disclosure of knowledge of facts known peculiarly to the caller.

Verily, it is only fair that the caller be reliably identified first before a telephone communication is accorded probative weight. The identity of the caller may be established by direct or circumstantial evidence. According to one ruling of the Kansas Supreme Court:

Communications by telephone are admissible in evidence where they are relevant to the fact or facts in issue, and admissibility is governed by the same rules of evidence concerning face-to-face conversations except the party against whom the conversations are sought to be used must ordinarily be identified. It is not necessary that the witness be able, at the time of the conversation, to identify the person with whom the conversation was had, provided subsequent identification is proved by direct or circumstantial evidence somewhere in the development of the case. The mere statement of his identity by the party calling is not in itself sufficient proof of such identity, in the absence of corroborating circumstances so as to render the conversation admissible. However, circumstances preceding or following the conversation may serve to sufficiently identify the caller. The completeness of the identification goes to the weight of the evidence rather than its admissibility, and the responsibility lies in the first instance with the district court to determine within its sound discretion whether the threshold of admissibility has been met.

Yet, the Prosecution did not tender any plausible explanation or offer any proof to definitely establish that it had been Wagas whom Ligaray had conversed with on the telephone. The Prosecution did not show through Ligaray during the trial as to how he had determined that his caller was Wagas. All that the Prosecution sought to elicit from him was whether he had known and why he had known Wagas. xxx

It is a fundamental rule in criminal procedure that the State carries the *onus probandi* in establishing the guilt of the accused beyond a reasonable doubt, as a consequence of the tenet *ei incumbit probation, qui dicit, non qui negat*, which means that he who asserts, not he who denies, must prove,[40] and as a means of respecting the presumption of innocence in favor of the man or woman on the dock for a crime. xxx

There is no question that an identification that does not preclude a reasonable possibility of mistake cannot be accorded any evidentiary force. Thus, considering that the circumstances of the identification of Wagas as the person who transacted on the rice did not preclude a reasonable possibility of mistake, the proof of guilt did not measure up to the standard of proof beyond reasonable doubt demanded in criminal cases. Perforce, the accused's constitutional right of presumption of innocence until the contrary is proved is not overcome, and he is entitled to an acquittal, even though his innocence may be doubted.

Nevertheless, an accused, though acquitted of *estafa*, may still be held civilly liable where the preponderance of the established facts so warrants. Wagas as the admitted drawer of the check was legally liable to pay the amount of it to Ligaray, a holder in due course.[47] Consequently, we pronounce and hold him fully liable to pay the amount of the dishonored check, plus legal interest of 6% *per annum* from the finality of this decision.

SAMSON CHING, *Petitioner*, vs. CLARITA NICDAO and HON. COURT OF APPEALS, *Respondents*.

G.R. No. 141181, THIRD DIVISION, April 27, 2007, CALLEJO, SR., *J.*

"Every person criminally liable for a felony is also civilly liable. Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.
Petitioner Ching correctly argued that he, as the offended party, may appeal the civil aspect of the case notwithstanding respondent Nicdao's acquittal by the CA. The civil action was impliedly instituted with the criminal action since he did not reserve his right to institute it separately nor did he institute the civil action prior to the criminal action.

FACTS:

Nicdao was charged eleven (11) counts of violation of Batas Pambansa Bilang (BP) 22. MTC found her of guilty of said offenses. RTC affirmed. Nicdao filed an appeal to the Court of Appeals. CA reversed the decision and acquitted accused. Ching is now appealing the civil aspect of the case to the Supreme Court. Ching vigorously argues that notwithstanding respondent Nicdao's acquittal by the CA, the Supreme Court has the jurisdiction and authority to resolve and rule on her civil liability. He anchors his contention on Rule 111, Sec 1B: The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized. Moreover, under the above-quoted provision, the criminal action for violation of BP 22 necessarily includes the corresponding civil action, which is the recovery of the amount of the dishonored check representing the civil obligation of the drawer to the payee.

Nicdao's defense: Sec 2 of Rule 111 — Except in the cases provided for in Section 3 hereof, after the criminal action has been commenced, the civil action which has been reserved cannot be instituted until final judgment in the criminal action. Accdg to her, CA's decision is equivalent to a finding that the facts upon which her civil liability may arise do not exist. The instant petition, which seeks to enforce her civil liability based on the eleven (11) checks, is thus allegedly already barred by the final and executory decision acquitting her.

ISSUE:

I. WON Ching may appeal the civil aspect of the case within the reglementary period. (YES)
II. WON Nicdao is civilly liable. (NO)

RULING:

I. Ching is entitled to appeal the civil aspect of the case within the reglementary period. "Every person criminally liable for a felony is also civilly liable. Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.

Petitioner Ching correctly argued that he, as the offended party, may appeal the civil aspect of the case notwithstanding respondent Nicdao's acquittal by the CA. The civil action was impliedly instituted with the criminal action since he did not reserve his right to institute it separately nor did he institute the civil action prior to the criminal action.

If the accused is acquitted on reasonable doubt but the court renders judgment on the civil aspect of the criminal case, the prosecution cannot appeal from the judgment of acquittal as it would place the

accused in double jeopardy. However, the aggrieved party, the offended party or the accused or both may appeal from the judgment on the civil aspect of the case within the period therefor.

Civil liability is not extinguished by acquittal:

1. where the acquittal is based on reasonable doubt;
2. where the court expressly declares that the liability of the accused is not criminal but only civil in nature; and
3. where the civil liability is not derived from or based on the criminal act of which the accused is acquitted.

II. A painstaking review of the case leads to the conclusion that respondent Nicdao's acquittal likewise carried with it the extinction of the action to enforce her civil liability. There is simply no basis to hold respondent Nicdao civilly liable to petitioner Ching.

CA's acquittal of respondent Nicdao is not merely based on reasonable doubt. Rather, it is based on the finding that she did not commit the act penalized under BP 22. In particular, the CA found that the P20,000,000.00 check was a stolen check which was never issued nor delivered by respondent Nicdao to petitioner Ching.

CA did not adjudge her to be civilly liable to petitioner Ching. In fact, the CA explicitly stated that she had already fully paid her obligations. The finding relative to the P20,000,000.00 check that it was a stolen check necessarily absolved respondent Nicdao of any civil liability thereon as well.

Under the circumstances which have just been discussed lengthily, such acquittal carried with it the extinction of her civil liability as well.

JOSE ONG AND NELLY ONG *v.* SANDIGANBAYAN
G.R. No. 126858, SECOND DIVISION, September 16, 2005, PUNO, *J.*

The presumption of innocence clause is not violated by Sec. 2 of RA 1379 which states that property acquired by a public officer or employee during his incumbency in an amount which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property shall be presumed prima facie to have been unlawfully acquired. As elaborated by Fr. Joaquin Bernas, under the principle of presumption of innocence, it is merely required of the State to establish a prima facie case, after which the burden of proof shifts to the accused.

FACTS:

Congressman Bonifacio H. Gillego executed a Complaint-Affidavit, claiming that petitioner Jose U. Ong, then Commissioner of the BIR, has amassed properties worth disproportionately more than his lawful income. Ong submitted an explanation and analysis of fund sourcing, reporting his net worth covering the calendar years 1989 to 1991 and showing his sources and uses of funds, the sources of the increase in his net worth and his net worth as of December 13, 1991. Ong filed a Counter-Affidavit, submitting his Statement of Assets and Liabilities for the years 1988-1990, income tax return for 1988, bank certificate showing that he obtained a loan from Allied Bank, certificate from SGV & Co. showing that he received retirement benefits from the latter, a document entitled Acknowledgement of Trust showing that he acquired one of the questioned assets for his brother-in-law, and other documents explaining the sources of funds with which he acquired the questioned assets.

ISSUE: Whether or not the presumption of innocence apply to forfeiture proceedings. (NO)

RULING:

The presumption of innocence clause of the Constitution refers to criminal prosecutions and not to forfeiture proceedings which are civil actions in rem. The Constitution is likewise not violated by RA 1379 because statutes which declare that as a matter of law a particular inference follows from the proof of a particular fact, one fact becoming prima facie evidence of another, are not necessarily invalid, the effect of the presumption being merely to shift the burden of proof upon the adverse party.
The presumption of innocence clause is not violated by Sec. 2 of RA 1379 which states that property acquired by a public officer or employee during his incumbency in an amount which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property shall be presumed prima facie to have been unlawfully acquired. As elaborated by Fr. Joaquin Bernas, under the principle of presumption of innocence, it is merely required of the State to establish a prima facie case, after which the burden of proof shifts to the accused.

ROLITO GO y TAMBUNTING, *Petitioner*, vs. THE COURT OF APPEALS, THE HON. BENJAMIN V. PELAYO, Presiding Judge, Branch 168, Regional Trial Court, NCJR Pasig, M.M., and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 101837, EN BANC, February 11, 1992, FELICIANO, *J.*

The right to preliminary investigation is deemed waived when the accused fails to invoke it before or at the time of entering a pleas at arraignment. The facts of the case show that petitioner insisted on his right to preliminary investigation before his arraignment and he, through his counsel denied answering questions before the court unless they were afforded the proper preliminary investigation. For the above reasons, the petition was granted and the ruling of the appellate court was set aside and nullified. The Supreme Court however, contrary to petitioner's allegation, declared that failure to accord the right to preliminary investigation did not impair the validity of the information charging the latter of the crime of murder.

FACTS:

An information was filed charging herein petitioner Rolito Go for murder before the Regional Trial Court of Metro Manila. Petitioner voluntarily presented himself together with his two lawyers to the police upon obtaining knowledge of being hunted by the latter. However, he was immediately detained and denied his right of a preliminary investigation unless he executes and sings a waiver of the provisions of Article 125 of the Revised Penal Code. Upon omnibus motion for immediate release on recognizance or on bail and proper preliminary investigation on the ground that his warrantless arrest was unlawful and no preliminary investigation was conducted before the information was filed, which is violative of his rights, the same was granted but later on reversed by the lower court and affirmed by the Court of Appeals. The appellate court in sustaining the decision of the lower court held that petitioner's warrantless arrest was valid in view of the fact that the offense was committed, the petitioner was clearly identified and there exists valid information for murder filed against petitioner
Hence, the petitioner filed this present petition for review on certiorari before the Supreme Court.

ISSUES:

1. Whether or not the warrantless arrest of herein petitioner was lawful, and
2. Whether or not petitioner waived his right to preliminary investigation.

RULING:

The general rule on arrest provides that the same is legitimate if effected with a valid warrant. However, there are instances specifically enumerated under the law when a warrantless arrest may be considered lawful. Despite that, the warrantless arrest of herein petitioner Rolito Go does not fall within the terms of said rule. The police were not present at the time of the commission of the offense, neither do they have personal knowledge on the crime to be committed or has been committed not to mention the fact that petitioner was not a prisoner who has escaped from the penal institution. In view of the above, the allegation of the prosecution that petitioner needs to sign a waiver of the provisions of Article 125 of the Revised Penal Code before a preliminary investigation may be conducted is baseless. In this connection, petitioner has all the right to ask for a preliminary investigation to determine whether is probable cause that a crime has been committed and that petitioner is probably guilty thereof as well as to prevent him from the hassles, anxiety and aggravation brought by a criminal proceeding. This reason of the accused is substantial, which he should not be deprived of.

On the other hand, petitioner did not waive his right to have a preliminary investigation contrary to the prosecutor's claim. The right to preliminary investigation is deemed waived when the accused fails to invoke it before or at the time of entering a pleas at arraignment. The facts of the case show that petitioner insisted on his right to preliminary investigation before his arraignment and he, through his counsel denied answering questions before the court unless they were afforded the proper preliminary investigation. For the above reasons, the petition was granted and the ruling of the appellate court was set aside and nullified. The Supreme Court however, contrary to petitioner's allegation, declared that failure to accord the right to preliminary investigation did not impair the validity of the information charging the latter of the crime of murder.

SENATOR JINGGOY EJERCITO ESTRADA *vs.* BERSAMIN, OFFICE OF THE OMBUDSMAN, FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION AND ATTY. LEVITO D. BALIGOD
G.R. Nos. 212140-41, January 21, 2015, J. Carpio

As can be gleaned from both the Rules of Procedure of the Office of the Ombudsman and the Rules of Court, the respondent is required to be furnished a copy of the complaint and the supporting affidavits and documents. Clearly, these pertain to affidavits of the complainant and his witnesses, not the affidavits of the co-respondent. As such, no grave abuse of discretion can thus be attributed to the Ombudsman for the issuance of an order denying the request of the respondent to be furnished copies of counter-affidavits of his corespondents. Also, as a general rule, a motion for reconsideration is mandatory before the filing of a petition for certiorari. Absent any compelling reason to justify non-compliance, a petition for certiorari will not lie. All the more, it will lie only if there is no appeal or any other plain, speedy and adequate remedy available in the ordinary course of law. Thus, a failure to avail of the opportunity to be heard due to the respondent's own fault cannot in any way be construed as a violation of due process by the Ombudsman, much less of grave abuse of discretion. Finally, a respondent's claim that his rights were violated cannot be given credence when he flouts the rules himself by resorting to simultaneous remedies by filing Petition for Certiorari alleging violation of due

process by the Ombudsman even as his Motion for Reconsideration raising the very same issue remained pending with the Ombudsman.

FACTS:

On 25 November 2013, the Ombudsman served upon Sen. Estrada copies of two complaints one filed by the NBI and Atty. Baligod (OMB-C-C-13-0313) and the other filed by the FIO of the Ombudsman (OMB-C-C-13-0397). Those complaints both prayed, among others, that criminal proceedings for Plunder as defined in RA No. 7080 be conducted against Sen. Estrada. The latter in turn filed his counter-affidavits in each of those complaints. On 20 March 2014, Sen. Estrada filed his Request to be Furnished with Copies of Counter-Affidavits of the Other Respondents, Affidavits of New Witnesses and Other Filings (Request) in OMB-C-C-13-0313. His request was made "pursuant to the right of a respondent 'to examine the evidence submitted by the complainant which he may not have been furnished' (Section 3[b], Rule 112 of the Rules of Court) and to 'have access to the evidence on record' (Section 4[c], Rule II of the Rules of Procedure of the Office of the Ombudsman)." On 27 March 2014, the Ombudsman issued the assailed Order in OMB-C-C-13-0313 which stated that Sen. Estrada is not entitled to be furnished all the filings of the respondents. Further, it held that it has already complied with its obligations as provided for in the Rules of Court when, as attached to the Orders to File Counter-Affidavit, it furnished Sen. Estrada a copy of the Complaint and its supporting affidavits and documents. It asserted that there is no provision under this Office's Rules of Procedure which entitles him to be furnished all the filings by the other parties, e.g. the respondents. Ruby Tuason, Dennis Cunanan, Gondelina G. Amata and Mario L. Relampagos themselves are all respondents in these cases. Under the Rules of Court as well as the Rules of Procedure of the Office of the Ombudsman, the respondents are only required to furnish their counter-affidavits and controverting evidence to the complainant, and not to the other respondents. Nevertheless, it also held that he should be furnished a copy of the Reply of complainant NBI as he is entitled thereto under the rules; however, no such Reply has been filed by complainant NBI. Without filing a Motion for Reconsideration of the Ombudsman's 27 March 2014 Order denying his Request, Sen. Estrada filed the present Petition for Certiorari under Rule 65 and sought to annul and set aside the 27 March 2014 Order. On the same date, 7 May 2014, the Ombudsman issued a Joint Order furnishing Sen. Estrada with the counteraffidavits of Tuason, Cunanan, Amata, Relampagos, Francisco Figura, Gregoria Buenaventura, and Alexis Sevidal, and directing him to comment thereon within a nonextendible period of five days from receipt of the order.

On 12 May 2014, Sen. Estrada filed before the Ombudsman a motion to suspend proceedings in OMB-C-C-13-0313 and OMB-C-C-13-0397 because the denial of his Request to be furnished copies of counter-affidavits of his co-respondents deprived him of his right to procedural due process, and he has filed the present Petition before this Court. The Ombudsman denied Sen. Estrada's motion to suspend. Hence, he filed a motion for reconsideration of the same which was, however, denied. As of 2 June 2014, the date of filing of the Ombudsman's Comment to the present Petition, Sen. Estrada had not filed a comment on the counter-affidavits furnished to him. On 4 June 2014, the Ombudsman issued a Joint Order stating that while it is true that Senator Estrada's request for copies of affidavits of specified co-respondents was denied by Order dated 27 March 2014, it thereafter re-evaluated the request and granted it by Order dated 7 May 2014. The Ombudsman even held in abeyance the disposition of the motions for reconsideration in light of its grant to Sen. Estrada of a period of five days to formally respond to the above-named co-respondents' claims. Hence, it declared that Senator Estrada was not deprived of his right to procedural due process. On 2 June 2014, the Ombudsman, the FIO, and the NBI (collectively, public respondents), through the Office of the Solicitor General, filed their Comment to the present Petition.

ISSUE:

Whether or not Senator Estrada's constitutional right to due process was violated.

RULING:

The Ombudsman's denial in its 27 March 2014 Order of Sen. Estrada's Request did not constitute grave abuse of discretion. Indeed, the denial did not violate Sen. Estrada's constitutional right to due process.

First, there is no law or rule which requires the Ombudsman to furnish a respondent with copies of the counter-affidavits of his co-respondents. Albeit Sen. Estrada's claim that the denial of his Request for the counter-affidavits of his co-respondents violates his constitutional right to due process, he, however, fails to specify a law or rule which states that it is a compulsory requirement of due process in a preliminary investigation that the Ombudsman furnish a respondent with the counter-affidavits of his co-respondents. Neither Section 3(b), Rule 112 of the Revised Rules of Criminal Procedure nor Section 4(c), Rule II of the Rules of Procedure of the Office of the Ombudsman supports Sen. Estrada's claim.

What the Rules of Procedure of the Office of the Ombudsman require is for the Ombudsman to furnish the respondent with a copy of the complaint and the supporting affidavits and documents at the time the order to submit the counter-affidavit is issued to the respondent. This is clear from Section 4(b), Rule II of the Rules of Procedure of the Office of the Ombudsman when it states, "after such affidavits of the complainant and his witnesses have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits x x x." At this point, there is still no counter-affidavit submitted by any respondent. Clearly, what Section 4(b) refers to are affidavits of the complainant and his witnesses, not the affidavits of the corespondents.

Obviously, the counter-affidavits of the co-respondents are not part of the supporting affidavits of the complainant. No grave abuse of discretion can thus be attributed to the Ombudsman for the issuance of the 27 March 2014 Order which denied Sen. Estrada's Request.

Although Section 4(c), Rule II of the Rules of Procedure of the Office of the Ombudsman provides that a respondent "shall have access to the evidence on record," this provision should be construed in relation to Section 4(a) and (b) of the same Rule, as well as to the Rules of Criminal Procedure. First, Section 4(a) states that "the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaint." The "supporting witnesses" are the witnesses of the complainant, and do not refer to the co-respondents.

Second, Section 4(b) states that "the investigating officer shall issue an order attaching thereto a copy of the affidavits and all other supporting documents, directing the respondent" to submit his counter-affidavit. The affidavits referred to in Section 4(b) are the affidavits mentioned in Section 4(a). Clearly, the affidavits to be furnished to the respondent are the affidavits of the complainant and his supporting witnesses. The provision in the immediately succeeding Section 4(c) of the same Rule II that a respondent shall have "access to the evidence on record" does not stand alone, but should be read in relation to the provisions of Section 4(a and b) of the same Rule II requiring the investigating officer to furnish the respondent with the "affidavits and other supporting documents" submitted by

"the complainant or supporting witnesses." Thus, a respondent's "access to evidence on record" in Section 4(c), Rule II of the Ombudsman's Rules of Procedure refers to the affidavits and supporting documents of "the complainant or supporting witnesses" in Section 4(a) of the same Rule II. Third, Section 3(b), Rule 112 of the Revised Rules of Criminal Procedure provides that "the respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense." A respondent's right to examine refers only to "the evidence submitted by the complainant."

Thus, whether under Rule 112 of the Revised Rules of Criminal Procedure or under Rule II of the Ombudsman's Rules of Procedure, there is no requirement whatsoever that the affidavits executed by the co-respondents should be furnished to a respondent.

In Sen. Estrada's Petition, the denial of his Request happened during the preliminary investigation where the only issue is the existence of probable cause for the purpose of determining whether an information should be filed, and does not prevent Sen. Estrada from requesting a copy of the counter-affidavits of his co-respondents during the pre-trial or even during the trial. It is a fundamental principle that the accused in a preliminary investigation has no right to cross-examine the witnesses which the complainant may present. Section 3, Rule 112 of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine.

Moreover, a person under preliminary investigation, as Sen. Estrada is in the present case when he filed his Request, is not yet an accused person, and hence cannot demand the full exercise of the rights of an accused person. While probable cause demands more than"bare suspicion," it requires "less than evidence which would justify conviction." A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt. Hence, the constitutional right of an accused to confront the witnesses against him does not apply in preliminary investigations; nor will the absence of a preliminary investigation be an infringement of his right to confront the witnesses against him. A preliminary investigation may be done away with entirely without infringing the constitutional right of an accused under the due process clause to a fair trial.

Second, Sen. Estrada's present Petition for Certiorari is premature. The unquestioned rule in this jurisdiction is that certiorari will lie only if there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law against the acts of the public respondent. The plain, speedy and adequate remedy expressly provided by law is a Motion for Reconsideration of the 27 March 2014 Order of the Ombudsman. In the case at bar, Sen. Estrada did not file any pleading, much less a motion for reconsideration, to the 27 March 2014 Order in OMB-C-C-13-0313. He immediately proceeded to file this Petition for Certiorari before this Court. His resort to a petition for certiorari before this Court stands in stark contrast to his filing of his 7 April 2014 Motion for Reconsideration of the 28 March 2014 Joint Resolution finding probable cause. As a general rule, a motion for reconsideration is mandatory before the filing of a petition for certiorari. Sen. Estrada, however, failed to present a compelling reason that the present Petition falls under the exceptions. Evidently, when the Ombudsman gave Sen. Estrada copies of the counteraffidavits and even waited for the lapse of the given period for the filing of his comment, Sen. Estrada failed to avail of the opportunity to be heard due to his own fault. Thus, his failure cannot in any way be construed as violation of due process by the Ombudsman, much less of grave abuse of discretion. He has not filed any comment, and still chooses not to.

Third, Sen. Estrada's present Petition for Certiorari constitutes forum shopping and should be summarily dismissed. Clearly, Sen. Estrada expressly raised in his Motion for Reconsideration with the Ombudsman the violation of his right to due process, the same issue he is raising in this petition. Furthermore, on the verification and certification of nonforum shopping attached to his petition docketed as G.R. Nos. 212761-62 filed on 23 June 2014, he disclosed the pendency of the present petition, as well as those before the Sandiganbayan for the determination of the existence of probable cause. In his petition in G.R. Nos. 212761-62, he again mentioned the Ombudsman's 27 March 2014 Joint Order denying his Request. Hence, Sen. Estrada has not been candid with this Court. His claim that the finding of probable cause was the "sole issue" he raised before the Ombudsman in his Motion for Reconsideration dated 7 April 2014 is obviously false. Moreover, even though Sen. Estrada acknowledged his receipt of the Ombudsman's 4 June 2014 Joint Order which denied his motion for reconsideration of the 28 March 2014 Joint Resolution, he did not mention that the 4 June 2014 Joint Order stated that the Ombudsman "held in abeyance the disposition of the motions for reconsideration in this proceeding in light of its grant to Sen. Estrada a period of five days from receipt of the 7 May 2014 Joint Order to formally respond to the above-named co-respondent's claims."

Finally, Sen. Estrada claims that his rights were violated but he flouts the rules himself. Sen. Estrada resorted to simultaneous remedies by filing this Petition alleging violation of due process by the Ombudsman even as his Motion for Reconsideration raising the very same issue remained pending with the Ombudsman. This is plain and simple forum shopping, warranting outright dismissal of this Petition.

NIEVA M. MANEBO, *Petitioner*, vs. SPO1 ROEL D. ACOSTA and NUMERIANO SAPIANDANTE, *Respondents*
G.R. No. 169554, THIRD DIVISION, October 28, 2009, PERALTA, *J.*

To determine the existence of probable cause, there is a need to conduct a preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. Its purpose is to determine whether (a) a crime has been committed; and (b) there is probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be reasonably charged with a crime.

In this case, we find that the DOJ committed a manifest error in finding no probable cause to charge respondents with the crime of murder.

FACTS:

Bernadette M. Dimatulac, the victim, and Flordeliza V. Bagasan (Bagasan) were seated beside each other on a papag watching television inside the church of the Kaibigan Foundation, Inc. Suddenly, a man later identified as SPO1 Roel Acosta (respondent Acosta), with an unidentified male companion, both with short firearms, entered the church premises. Respondent Acosta approached the victim and Bagasan and, at an arm's length distance, respondent Acosta shot the victim several times on the head and body causing her instantaneous death.

Severino Sardia (Sardia), who was standing in front of his house at Barangay San Mariano, Sta. Rosa, Nueva Ecija, heard several gunshots and saw two men with short firearms run out of the Kaibigan Foundation, Inc. Chapel. The two men immediately boarded an owner-type jeep without a plate number parked along Maharlika Highway and proceeded to the direction going to San Leonardo town. While the driver of the jeep was in the process of backing up his vehicle, Sardia recognized the driver as Numeriano Sapiandante (respondent Sapiandante), the Barangay Captain of Barangay Tagumpay, San Leonardo, Nueva Ecija.

A complaint for murder was filed by Nieva Manebo (Manebo), sister of the victim, against respondents Acosta and Sapiandante before the Special Action Unit (SAU) of the National Bureau of Investigation (NBI). Respondents denied the accusations against them.

State Prosecutor Abad issued a Joint Resolution, approved by the Chief State Prosecutor. Respondents filed their motion for reconsideration, which was denied in a Resolution.

Respondents filed their appeal with the DOJ Secretary.

In the meantime, the herein murder case filed in the RTC of Cabanatuan City was transferred to the RTC of Manil. Alias warrants of arrest for respondents were issued.

DOJ: the evidence against respondents Acosta and Sapiandante lack the required quantum of proof sufficient to indict them for the offense charged.

Pursuant to the resolution of the DOJ Secretary, the prosecutor filed a Motion to Withdraw the Information.

Petitioner filed an appeal with the Office of the President (OP).

OP: rendered its Decision dismissing the appeal and affirming in toto the resolution of the DOJ Secretary.

Petitioner's motion for reconsideration was denied by the OP.

Aggrieved, petitioner filed a petition for certiorari under Rule 43 with the CA.

RTC: resolved to suspend the resolution on the motion to withdraw information filed by the prosecutor, considering that respondents were still at-large and had not been prejudiced by the petition for review filed with the CA and also in deference to the appellate court. The RTC likewise ruled for the suspension of the implementation of the warrants of arrest for respondents as moved by the respondents' counsel until after the resolution of the petition filed before the CA.

CA: Dismissed the petition for lack of merit.

ISSUE:

1) Whether or not the Secretary of Justice may disregard the provisions of Department Circular No. 70 dated July 3, 2000, which became effective on September 1, 2000, particularly Sections 5 and 6. (NO)

2) Whether or not there is probable cause to charge the respondents for the crime of murder. (NO)

RULING:

1) If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition.

Section 6. Effect of failure to comply with requirements. - The failure of the petitioner to comply with any of the foregoing requirements shall constitute sufficient ground for the dismissal of the petition.

Respondents filed their petition for review with the DOJ Secretary on March 23, 2001. On August 20, 2001, they filed with the RTC of Cabanatuan City, Branch 27, a Motion to Suspend Proceedings pending a final determination of the merits of their petition by the DOJ Secretary. On August 27, 2001, respondents filed with the DOJ a document captioned as Compliance where they submitted the motion to suspend proceedings filed in the RTC. Notably, the motion to suspend proceedings was only filed with the RTC after respondents had already filed their petition for review with the DOJ which explains why the petition was not accompanied by a motion to suspend proceedings. Notably, immediately after the motion to suspend proceeding was filed with the RTC, respondents submitted a copy of such motion with the DOJ. Under the circumstances, we hold that there was substantial compliance with the requirements under Section 5 of Department Circular No.70.

2) To determine the existence of probable cause, there is a need to conduct a preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case. Its purpose is to determine whether (a) a crime has been committed; and (b) there is probable cause to believe that the accused is guilty thereof. It is a means of discovering which person or persons may be reasonably charged with a crime.

In this case, we find that the DOJ committed a manifest error in finding no probable cause to charge respondents with the crime of murder.

While the initial police report stated that the name of the person who was seated beside the victim when the latter was shot was Liza Gragasan, such report would not conclusively establish that Liza Gragasan could not have been Flordeliza Bagasan, the witness who executed an affidavit four months after the incident. Notably, Flordeliza's nickname is Liza, and her surname Bagasan sounds similar to Gragasan. Under the rule of idem sonans, two names are said to be "idem sonantes" if the attentive ear finds difficulty in distinguishing them when pronounced. The question whether a name sounds the same as another is not one of spelling but of pronunciation. While the surname Bagasan was incorrectly written as Gragasan, when read, it has a sound similar to the surname Bagasan. Thus, the presence of Bagasan at the crime scene was established, contrary to the conclusion arrived at by the DOJ Secretary.

The execution of Bagasan's affidavit four months after the incident should not be taken against her, as such reaction is within the bounds of expected human behavior. Notably, the police report stated that during the conduct of the investigation, Bagasan was shocked after the incident and could not possibly be interviewed. Initial reluctance to volunteer information regarding a crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility. Bagasan's action revealed a spontaneous and natural reaction of a person who had yet to fully comprehend a shocking and traumatic event. Besides, the workings of the human mind are

unpredictable. People react differently to emotional stress. There is simply no standard form of behavioral response that can be expected from anyone when confronted with a strange, startling or frightful occurrence.

Moreover, a witness' delay in reporting what she knows about a crime does not render her testimony false or incredible, for the delay may be explained by the natural reticence of most people to get involved in a criminal case. x x x

The identification made by Bagasan, with respect to respondent Acosta was corroborated by another witness, Sardia, who saw Acosta with another unidentified male companion rushing out of the chapel where the killing incident took place. Sardia was familiar with the face of respondent Acosta, since the latter was a witness in a case of frustrated murder against Sapiandante. Although Sapiandante denied in his counter-affidavit that respondent Acosta ever became such witness, this allegation should be proven during the trial of the case. Sardia was also able to positively identify Sapiandante as the driver of the get-away vehicle.

The DOJ Secretary did not also find the statements given by Sardia as credible, as the latter was not among those mentioned as a witness in the police report.

We do not agree.

The failure of the police report to mention Sardia's name as a witness would not detract from the fact that he saw respondent Acosta with an unidentified man running away from the chapel and riding the waiting get- away vehicle driven by Sapiandante. Entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries and should not be given undue significance or probative value for they are usually incomplete and inaccurate.

The matter of assigning value to the declaration of a witness is best done by the trial court, which can assess such testimony in the light of the demeanor, conduct and attitude of the witness at the trial stage.

Finally, we also do not agree with the DOJ Secretary's finding that since Sardia's affidavit was also belatedly executed, the same is not credible. As we have said, witnesses are usually reluctant to volunteer information about a criminal case or are unwilling to be involved in or dragged into criminal investigations due to a variety of valid reasons. Fear of reprisal and the natural reluctance of a witness to get involved in a criminal case are sufficient explanations for a witness' delay in reporting a crime to authorities. The DOJ ruling -- that fear could not have been the reason, because as early as 1998 Sardia had already filed a complaint for attempted murder against Sapiandante, which was already dismissed -- is merely speculative.

We need not over-emphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. Considering the foregoing, we find that the CA erred in affirming the DOJ's finding of the absence of probable cause to indict respondents for murder.

P/INSP. ARIEL S. ARTILLERO, *Petitioner*, vs. ORLANDO C. CASIMIRO, OVERALL DEPUTY OMBUDSMAN, OFFICE OF THE DEPUTY OMBUDSMAN; BERNABE D. DUSABAN, PROVINCIAL

PROSECUTOR, OFFICE OF THE PROVINCIAL PROSECUTOR OF ILOILO; EDITO AGUILLON, BRGY. CAPT., BRGY. LANJAGAN, AJUY, ILOILO, *Respondents*.
G.R. No. 190569, SECOND DIVISION, April 25, 2012, SERENO, *J.*

The authority of punong barangays to possess the necessary firearm within their territorial jurisdiction is necessary to enforce their duty to maintain peace and order within the barangays. Owing to the similar functions, that is, to keep peace and order, this Court deems that, like police officers, punong barangays have a duty as a peace officer that must be discharged 24 hours a day. As a peace officer, a barangay captain may be called by his constituents, at any time, to assist in maintaining the peace and security of his barangay. As long as Aguillon is within his barangay, he cannot be separated from his duty as a punong barangay—to maintain peace and order.

FACTS:

On 6 August 2008, at about 6:45 in the evening, the municipal station received information that successive gun fires had been heard in Barangay Lanjagan, Ajuy Iloilo. Thus, petitioner, together with Police Inspector Idel Hermoso (Hermoso), and Senior Police Officer (SPO1) Arial Lanaque (Lanaque), immediately went to the area to investigate.

Upon arriving, they saw Aguillon, wobbling and drunk, openly carrying a rifle. According to petitioner and Hermoso, although Aguillon was able to present his Firearm License Card, he was not able to present a PTCFOR.

Petitioner and Hermoso executed a Joint Affidavit alleging the foregoing facts in support of the filing of a case for illegal possession of firearm against Aguillon. Petitioner also endorsed the filing of a Complaint against Aguillon through a letter sent to the Provincial Prosecutor on 12 August 2008.

For his part, Aguillon executed an Affidavit swearing that petitioner had unlawfully arrested and detained him for illegal possession of firearm, even though the former had every right to carry the rifle as evidenced by the license he had surrendered to petitioner. Aguillon further claims that he was duly authorized by law to carry his firearm within his barangay. According to petitioner, he never received a copy of the Counter-Affidavit Aguillon had filed and was thus unable to give the necessary reply.

In a Resolution dated 10 September 2008, the Office of the Provincial Prosecutor of Iloilo City recommended the dismissal of the case for insufficiency of evidence. Petitioner claims that he never received a copy of this Resolution.

Thereafter, Provincial Prosecutor Bernabe D. Dusaban (Provincial Prosectuor Dusaban) forwarded to the Office of the Deputy Ombudsman the 10 September 2008 Resolution recommending the approval thereof.

In a Resolution dated 17 February 2009, the Office of the Ombudsman, through Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman Casimiro), approved the recommendation of Provincial Prosectuor Dusaban to dismiss the case. It ruled that the evidence on record proved that Aguillon did not commit the crime of illegal possession of firearm since he has a license for his rifle. Petitioner claims that he never received a copy of this Resolution either.

On 22 June 2009, petitioner filed a Motion for Reconsideration (MR) of the 17 February 2009 Resolution, but it was denied through an Order dated 23 July 2009. Thus, on 8 December 2009, he filed the present Petition for Certiorari via Rule 65 of the Rules of Court.

According to petitioner, he was denied his right to due process when he was not given a copy of Aguillon's Counter-affidavit, the Asst. Prosecutor's 10 September 2008 Resolution, and the 17 February 2009 Resolution of the Office of the Ombudsman. Petitioner also argues that public respondents' act of dismissing the criminal Complaint against Aguillon, based solely on insufficiency of evidence, was contrary to the provisions of P.D. 1866 and its Implementing Rules and Regulations (IRR). He thus claims that the assailed Resolutions were issued "contrary to law, and/or jurisprudence and with grave abuse of discretion amounting to lack or excess of jurisdiction."

ISSUE:

1. Whether or not petitioner was denied due process when he was not given a copy of Aguillon's Counter-affidavit, the Asst. Prosecutor's 10 September 2008 Resolution, and the 17 February 2009 Resolution of the Office of the Ombudsman. (NO)

2. Whether or not respondent Aguillon is guilty of illegal possession of firearm.

RULING :

1. Petitioner's right of due process was not violated.

Article III, Section 14 of the 1987 Constitution, mandates that no person shall be held liable for a criminal offense without due process of law. It further provides that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. This is a right that cannot be invoked by petitioner, because he is not the accused in this case.

It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. (U.S. vs. Yu Tuico, 34 Phil. 209; People vs. Badilla, 48 Phil. 716). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (II Moran, Rules of Court, 1952 ed., p. 673). It is therefore clear that because a preliminary investigation is not a proper trial, the rights of parties therein depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase "due process of law." A complainant in a preliminary investigation does not have a vested right to file a Reply—this right should be granted to him by law. There is no provision in Rule 112 of the Rules of Court that gives the Complainant or requires the prosecutor to observe the right to file a Reply to the accused's counter-affidavit.

Furthermore, we agree with Provincial Prosecutor Dusaban that there was no need to send a copy of the 10 September 2008 Resolution to petitioner, since it did not attain finality until it was approved by the Office of the Ombudsman. It must be noted that the rules do not state that petitioner, as complainant, was entitled to a copy of this recommendation. The only obligation of the prosecutor, as detailed in Section 4 of Rule 112, was to forward the record of the case to the proper officer within five days from the issuance of his Resolution. Even though petitioner was indeed entitled to receive a copy of the Counter-affidavit filed by Aguillon, whatever procedural defects this case suffered from

in its initial stages were cured when the former filed an MR. In fact, all of the supposed defenses of petitioner in this case have already been raised in his MR and adequately considered and acted on by the Office of the Ombudsman.

The essence of due process is simply an opportunity to be heard. "What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard." We have said that where a party has been given a chance to be heard with respect to the latter's motion for reconsideration there is sufficient compliance with the requirements of due process.

2. Respondent Aguillon is not guilty of the crime charged.

The authority of Aguillon to carry his firearm outside his residence was not based on the IRR or the guidelines of P.D. 1866 but, rather, was rooted in the authority given to him by Local Government Code (LGC).

Provincial Prosecutor Dusaban's standpoint on this matter is correct. All the guidelines and rules cited in the instant Petition "refers to civilian agents, private security guards, company guard forces and government guard forces." These rules and guidelines should not be applied to Aguillon, as he is neither an agent nor a guard. As barangay captain, he is the head of a local government unit; as such, his powers and responsibilities are properly outlined in the LGC. This law specifically gives him, by virtue of his position, the authority to carry the necessary firearm within his territorial jurisdiction. Petitioner does not deny that when he found Aguillon "openly carrying a rifle," the latter was within his territorial jurisdiction as the captain of the barangay.

The authority of punong barangays to possess the necessary firearm within their territorial jurisdiction is necessary to enforce their duty to maintain peace and order within the barangays. Owing to the similar functions, that is, to keep peace and order, this Court deems that, like police officers, punong barangays have a duty as a peace officer that must be discharged 24 hours a day. As a peace officer, a barangay captain may be called by his constituents, at any time, to assist in maintaining the peace and security of his barangay. As long as Aguillon is within his barangay, he cannot be separated from his duty as a punong barangay—to maintain peace and order.

RUTH D. BAUTISTA, *Petitioner*, vs. COURT OF APPEALS, OFFICE OF THE REGIONAL STATE PROSECUTOR, REGION IV, and SUSAN ALOÑA, *Respondents*.
G.R. No. 143375, SECOND DIVISION, July 6, 2001, BELLOSILLO, *J.*

It is clear that petitioner is being prosecuted for violation of the first paragraph of the offense. The court is not convinced that the 90-day period is an essential element of the crime as claimed by the petitioner. The ninety (90)-day period creates a prima facie presumption of knowledge, but it is not a conclusive presumption that forecloses or precludes the presentation of evidence to the contrary.

FACTS:

Sometime in April 1998 petitioner Ruth D. Bautista issued to private respondent Susan Aloña a check dated 8 May 1998 for P1,500,000.00 drawn on Metrobank Cavite City Branch. Private respondent presented the check for payment. The drawee bank dishonored the check because it was drawn against insufficient funds. Private respondent filed a complaint-affidavit with the City Prosecutor of Cavite City. Petitioner then submitted her own counter-affidavit asserting in her defense that presentment of the check within ninety (90) days from due date thereof was an essential element of

the offense of violation of BP 22. Since the check was presented for payment 166 days after its due date, it was no longer punishable under BP 22.

The investigating prosecutor issued a resolution recommending the filing of an Information against petitioner for violation of BP 22, which was approved by the City Prosecutor. Bautista filed a motion to review the resolution with Office of the Regional State Prosecutor (ORSP) for Region IV, but it was denied. Petitioner filed with the Court of Appeals a petition for review of the resolution of the ORSP. The appellate court issued the assailed Resolution issued by ORSP. CA further stated it is an error to file a petition for review under Rule 43 of Rules of Civil Procedure in their case because ORSP resolution does not fall under a quasi-judicial body. The petitioner escalated the complaint to SC using the defense that a prosecutor conducting a preliminary investigation performs a quasi-judicial function.

ISSUE:

Whether or not the 90-day period is an essential element of BP 22 to warrant the defense of the petitioner.

RULING:

It is clear that petitioner is being prosecuted for violation of the first paragraph of the offense. The court is not convinced that the 90-day period is an essential element of the crime as claimed by the petitioner. The ninety (90)-day period creates a prima facie presumption of knowledge, but it is not a conclusive presumption that forecloses or precludes the presentation of evidence to the contrary. The term prima facie evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction.

MANILA ELECTRIC COMPANY, represented by MANOLO C. FERNANDO, *Petitioner,*
-versus-
VICENTE ATILANO, NAZAAR LUIS, JOCELYN DELA DINGCO, SHARON SEE VICENTE, and JOHN DOES, *Respondents.*
G.R. No. 166758, SECOND DIVISION, June 27, 2012, BRION, *J.*

MERALCO claims that the requirement to state the facts and the law in a decision is a mandatory requirement and the DOJ is not exempt from complying with the same. In arguing as it did, MERALCO failed to note that Section 14, Article VIII of the Constitution refers to "courts," thereby excluding the DOJ Secretary and prosecutors who are not members of the Judiciary. In Odchigue-Bondoc v. Tan Tiong Bio, we ruled that "Section 4, Article VIII of the Constitution does not x x x extend to resolutions issued by the DOJ Secretary." In explaining the inapplicability of Section 4, Article VIII of the Constitution to DOJ resolutions, the Court said that the DOJ is not a quasi-judicial body and the action of the Secretary of Justice in reviewing a prosecutor's order or resolution via appeal or petition for review cannot be considered a quasi-judicial proceeding.

FACTS:

Petitioner MERALCO, an electric utility company, is represented herein by its Senior Manager and Head of Treasury Operations Group, Manolo C. Fernando. Respondents are, at the time material to this case, officers of Corporate Investments Philippines, Inc. (CIPI) – a duly licensed investment house.

MERALCO filed a complaint for estafa, under Article 315, paragraphs 1(a), 1(b) and 2(a) of the Revised Penal Code, against the respondents. It alleged that in 1993, MERALCO started investing in commercial papers (CPs) through CIPI. MERALCO delivered funds to the respondents for investment in CPs and government securities (GS). Later, respondent Atilano, the then President of CIPI, informed the MERALCO President, Manuel Lopez, that CIPI was facing liquidity problems. Lopez agreed to extend help to CIPI by placing investments through CIPI, on the condition that CIPI would secure these investments with GS and CPs issued by the Lopez Group of Companies (Lopez Group).

MERALCO further alleged that it informed CIPI of its requirement to have the above-listed securities delivered to it within twenty-four (24) hours after the transaction, which CIPI failed to deliver despite repeated demands. Instead, CIPI allegedly diverted MERALCO's funds by placing the investments in CIPI's own promissory notes (PNs) and in CPs of companies that are not members of the Lopez Group. During one meeting between the parties, respondent Atilano allegedly reiterated to Fernando CIPI's liquidity problems, and promised to correct the irregularities committed by CIPI by making changes in MERALCO's investment portfolio. However, notwithstanding the agreed deadline for the fulfillment of the undertaking, CIPI allegedly failed to do so.

Thus, MERALCO argued that the respondents should be held liable for estafa, specifically for falsely pretending that they possess power, influence and qualifications to buy CPs of the Lopez Group and/or GS as agreed upon. MERALCO maintained that by substituting the required securities with PNs of CIPI and CPs of non-Lopez Group companies, the respondents are guilty of converting and misappropriating the subject funds to the prejudice of MERALCO.

In a resolution, Prosecutor Dennis R. Pastrana dismissed MERALCO's complaint for insufficiency of evidence. According to him, there is no clear proof that the respondents misappropriated or converted MERALCO's funds – the core element in the offense of estafa. He also found that MERALCO failed to prove the indispensable element of deceit as the evidence showed that respondent Atilano revealed CIPI's liquidity problems to MERALCO even before the latter placed its investment through CIPI. MERALCO moved to reconsider Prosecutor Pastrana's resolution but the latter denied the motion in a resolution.

Thereafter, MERALCO filed a petition for review before the Department of Justice (DOJ). Then DOJ Secretary Ma. Merceditas N. Gutierrez dismissed the petition in accordance with Section 12(c), in relation to Section 7, of Department Circular No. 70. She found no error on the part of the handling prosecutor that would warrant a reversal of the challenged resolution. MERALCO filed a motion for reconsideration of said resolution but the same was denied in a resolution.

Thereupon, MERALCO filed a petition for certiorari with the CA under Rule 65 of the Rules of Court to question the resolutions of the DOJ. However, the CA dismissed MERALCO's petition and affirmed

the resolutions of the Secretary of Justice. It noted that the DOJ Minute Resolution was not invalidated by the fact that it contained no further discussion of the factual and legal issues because the reviewing authority expressed full concurrence with the findings and conclusions made by the prosecutor.

ISSUE:

Whether or not the DOJ resolution was violative of the requirements laid down under Section 14, Article VIII of the Constitution, Section 14, Chapter III, Book VII of the Administrative Code of 1987 and the jurisprudential pronouncements of this Court on the matter (NO)

RULING:

The December 17, 2002 DOJ resolution was issued in accordance with Section 12(c), in relation to Section 7, of Department Circular No. 70, dated July 3, 2000, which authorizes the Secretary of Justice to dismiss a petition outright if he finds it to be patently without merit or manifestly intended for delay, or when the issues raised therein are too insubstantial to require consideration.

MERALCO considers the December 17, 2002 DOJ resolution invalid because of the absence of any statement of facts and law upon which it is based, as required under Section 14, Article VIII of the Constitution and Section 14, Chapter III, Book VII of the Administrative Code of 1987. MERALCO claims that the requirement to state the facts and the law in a decision is a mandatory requirement and the DOJ is not exempt from complying with the same.

In arguing as it did, MERALCO failed to note that Section 14, Article VIII of the Constitution refers to "courts," thereby excluding the DOJ Secretary and prosecutors who are not members of the Judiciary. In Odchigue-Bondoc v. Tan Tiong Bio, we ruled that "Section 4, Article VIII of the Constitution does not x x x extend to resolutions issued by the DOJ Secretary." In explaining the inapplicability of Section 4, Article VIII of the Constitution to DOJ resolutions, the Court said that the DOJ is not a quasi-judicial body and the action of the Secretary of Justice in reviewing a prosecutor's order or resolution via appeal or petition for review cannot be considered a quasi-judicial proceeding.

This is reiterated in our ruling in Spouses Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City, where we pointed out that a preliminary investigation is not a quasi-judicial proceeding, and the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. A quasi-judicial agency performs adjudicatory functions when its awards determine the rights of parties, and its decisions have the same effect as a judgment of a court. "[This] is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice [reviews] the former's order[s] or resolutions" on determination of probable cause.

In Odchigue-Bondoc, we ruled that when the public prosecutor conducts preliminary investigation, he thereby exercises investigative or inquisitorial powers. This power is distinguished from judicial adjudication which signifies the exercise of power and authority to adjudicate upon the rights and

obligations of concerned parties. Indeed, it is the exercise of investigatory powers which sets a public prosecutor apart from the court.

The public prosecutor exercises investigative powers in the conduct of preliminary investigation to determine whether, based on the evidence presented to him, he should take further action by filing a criminal complaint in court. In doing so, he does not adjudicate upon the rights, obligations or liabilities of the parties before him. Since the power exercised by the public prosecutor in this instance is merely investigative or inquisitorial, it is subject to a different standard in terms of stating the facts and the law in its determinations. This is also true in the case of the DOJ Secretary exercising her review powers over decisions of public prosecutors. Thus, it is sufficient that in denying a petition for review of a resolution of a prosecutor, the DOJ resolution state the law upon which it is based.

We rule, therefore, that the DOJ resolution satisfactorily complied with constitutional and legal requirements when it stated its legal basis for denying MERALCO's petition for review which is Section 7 of Department Circular No. 70, which authorizes the Secretary of Justice to dismiss a petition outright if he finds it to be patently without merit or manifestly intended for delay, or when the issues raised therein are too insubstantial to require consideration.

The DOJ resolution noted that MERALCO failed to submit a legible true copy of the confirmation of sale dated May 30, 2000 and considered the omission in violation of Section 5of Department Circular No. 70. MERALCO assails the dismissal on this ground as an overly technical application of the rules and claims that it frustrated the ends of substantial justice. We note, however, that the failure to attach the document was not the sole reason of the DOJ's denial of MERALCO's petition for review. As mentioned, the DOJ resolution dismissed the petition primarily because the prosecutor's resolution is in accord with the evidence and the law on the matter.

ALFREDO ROMULO A. BUSUEGO, *Petitioner,*
-versus-
OFFICE OF THE OMBUDSMAN MINDANAO and ROSA S. BUSUEGO, *Respondents.*
G.R. No. 196842, SECOND DIVISION, October 9, 2013, PEREZ, *J.*

In Honasan II, although Senator Gregorio "Gringo" Honasan was a public officer who was charged with coup d'etat for the occupation of Oakwood on 27 July 2003, the preliminary investigation therefor was conducted by the DOJ. Honasan questioned the jurisdiction of the DOJ to do so, proferring that it was the Ombudsman which had jurisdiction since the imputed acts were committed in relation to his public office. We clarified that the DOJ and the Ombudsman have concurrent jurisdiction to investigate offenses involving public officers or employees. Nonetheless, we pointed out that the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases. Plainly, applying that ruling in this case, the Ombudsman has primary jurisdiction, albeit concurrent with the DOJ, over Rosa's complaint, and after choosing to exercise such jurisdiction, need not defer to the dictates of a respondent in a complaint, such as Alfredo. In other words, the Ombudsman may exercise jurisdiction to the exclusion of the DOJ.

FACTS:

Private respondent Rosa S. Busuego filed a complaint for: (1) Concubinage under Article 334 of the Revised Penal Code; (2) violation of Republic Act No. 9262 (Anti-Violence Against Women and Their Children); and (3) Grave Threats under Article 282 of the Revised Penal Code, before the Office of the Ombudsman against her husband, Alfredo, with designation Chief of Hospital, Davao Regional Hospital, Apokon, Tagum City.

She and Alfredo were married in 1975. Their union was blessed with two sons, Alfred and Robert. In 1983, their marriage turned sour. Rosa unearthed photographs of, and love letters addressed to Alfredo from other women. Rosa confronted Alfredo who claimed ignorance of the existence of these letters and innocence of any wrongdoing.

Around this time, an opportunity to work as nurse abroad opened up for Rosa. Rosa informed Alfredo, who vehemently opposed Rosa's plan to work abroad. Before leaving for work abroad, Rosa took up the matter again with Alfredo. Furious with Rosa's pressing, Alfredo took his loaded gun and pointed it at Rosa's right temple, threatening Rosa to attempt to leave him and their family. Alfredo was only staved off because Rosa's mother arrived at the couple's house.

During the time she was working abroad, Rosa learned that a certain Emy Sia (Sia) was living at their conjugal home. When Rosa asked Alfredo, the latter explained that Sia was a nurse working at the hospital, and who was in a sorry plight as she was allegedly being raped by Rosa's brother-in-law. Alfredo allowed Sia to live in their house.

In 2005, Rosa finally learned of Alfredo's extra-marital relationships. Robert, who was living with Alfredo in Davao City, called Rosa to complain of Alfredo's illicit affairs and shabby treatment of him. Robert executed an affidavit, corroborating his mother's story and confirming his father's illicit affairs: a) in varying dates from July 1997 to January 1998, Robert found it strange that Sia slept with his father in the conjugal bedroom; b) Sia herself confirmed to Robert that she was Alfredo's mistress; c) the relationship between Alfredo and Sia ended only when the latter found another boyfriend; d) his father next took up an affair with Julie de Leon whom Robert met when de Leon fetched Alfredo on one occasion when their vehicle broke down in the middle of the road; and e) de Leon stayed in Rosa's and Alfredo's conjugal dwelling and stayed in the conjugal room the entire nights thereof.

In their subsequent exchange of responsive pleadings, Rosa maintained Alfredo's culpability, and naturally, Alfredo claimed innocence. In the course thereof, the procedural issue of Rosa's failure to implead Sia and de Leon as respondents cropped up. Alfredo insisted that Rosa's complaint ought to be dismissed for failure to implead his alleged concubines as respondents.

The Ombudsman scheduled a clarificatory hearing where both Rosa and Alfredo were represented by their respective counsels:

x x x this Office explained to the parties that the position of Alfredo would just prolong the conduct of the preliminary investigation since Rosa can just re-file her complaint. Hence, the counsel for Rosa

was directed to submit to this Office the addresses of the alleged mistresses so that they could be served with the Order directing them to file their counter-affidavits.

Opposed to the Ombudsman's ruling to simply amend the complaint and implead therein Alfredo's alleged mistresses, Alfredo filed his Comment to the Order with Motion to Dismiss and/or Refer the charges to the Appropriate Provincial/City Prosecutor praying for dismissal of the complaint for: (1) failure to implead the two mistresses in violation of Article 344 of the Revised Penal Code; and in the alternative, (2) referral of the complaint to the Office of the City Prosecutor as provided in OMB-DOJ Circular No. 95-001.

The Ombudsman, in its assailed Resolution, maintained its previous order. In the same Resolution, the Ombudsman, ultimately, found probable cause to indict only Alfredo and Sia of Concubinage and directed the filing of an Information against them in the appropriate court.

Alfredo filed a Partial Motion for Reconsideration excepting to the Ombudsman's ruling on the automatic inclusion of Sia as respondent in the complaint and their indictment for the crime of Concubinage, but the Ombudsman stood pat on its ruling.

ISSUE:

Whether or not the Ombudsman may be compelled to refer the complaint to the Department of Justice, considering that the offense of Concubinage is not committed in relation to his office as Chief of Hospital (NO)

RULING:

Alfredo claims that the Ombudsman should have referred Rosa's complaint to the Department of Justice (DOJ), since the crime of Concubinage is not committed in relation to his being a public officer. This is not a new argument.

The Ombudsman's primary jurisdiction, albeit concurrent with the DOJ, to conduct preliminary investigation of crimes involving public officers, without regard to its commission in relation to office, had long been settled in Sen. Honasan II v. The Panel of Investigating Prosecutors of DOJ, and affirmed in subsequent cases:

The Constitution, Section 15 of the Ombudsman Act of 1989 and Section 4 of the Sandiganbayan Law, as amended, do not give to the Ombudsman exclusive jurisdiction to investigate offenses committed by public officers or employees. The authority of the Ombudsman to investigate offenses involving public officers or employees is concurrent with other government investigating agencies such as provincial, city and state prosecutors. However, the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases.

In other words, respondent DOJ Panel is not precluded from conducting any investigation of cases against public officers involving violations of penal laws but if the cases fall under the exclusive jurisdiction of the Sandiganbayan, the respondent Ombudsman may, in the exercise of its primary jurisdiction take over at any stage.

In Honasan II, although Senator Gregorio "Gringo" Honasan was a public officer who was charged with coup d'etat for the occupation of Oakwood on 27 July 2003, the preliminary investigation therefor was conducted by the DOJ. Honasan questioned the jurisdiction of the DOJ to do so, proferring that it was the Ombudsman which had jurisdiction since the imputed acts were committed in relation to his public office. We clarified that the DOJ and the Ombudsman have concurrent jurisdiction to investigate offenses involving public officers or employees. Nonetheless, we pointed out that the Ombudsman, in the exercise of its primary jurisdiction over cases cognizable by the Sandiganbayan, may take over, at any stage, from any investigating agency of the government, the investigation of such cases. Plainly, applying that ruling in this case, the Ombudsman has primary jurisdiction, albeit concurrent with the DOJ, over Rosa's complaint, and after choosing to exercise such jurisdiction, need not defer to the dictates of a respondent in a complaint, such as Alfredo. In other words, the Ombudsman may exercise jurisdiction to the exclusion of the DOJ.

GIRLIE M. QUISAY, *Petitioner,*
-versus-
PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 216920, FIRST DIVISION, January 13, 2016, PERLAS-BERNABE, *J.*

There was no showing that it (Pabatid Sakdal) was approved by either the City Prosecutor of Makati or any of the OCP Makati's division chiefs or review prosecutors. All it contained was a Certification from ACP De La Cruz which stated, among others, that "DAGDAG KO PANG PINATUTUNAYAN na ang paghahain ng sakdal na ito ay may nakasulat na naunang pahintulot o pagpapatibay ng Panlunsod na Taga-Usig" - which translates to "and that the filing of the Information is with the prior authority and approval of the City Prosecutor."

In the cases of People v. Garfin, Turingan v. Garfin, and Tolentino v. Paqueo, the Court had already rejected similarly-worded certifications, uniformly holding that despite such certifications, the Informations were defective as it was shown that the officers filing the same in court either lacked the authority to do so or failed to show that they obtained prior written authority from any of those authorized officers enumerated in Section 4, Rule 112 of the 2000 Revised Rules of Criminal Procedure.

FACTS:

The Office of the City Prosecutor of Makati City issued a *Pasiya* (Resolution) finding probable cause against petitioner for violation of Section 10 of the RA 10071 (Special Protection of Children Against Abuse Exploitation and Discrimination Act). Consequently, a *Pabatid Sakdal* (Information) was filed before the RTC charging petitioner of such crime.

Petitioner moved for the quashal of the Information against her on the ground of lack of authority of the person who filed the same before the RTC. Petitioner pointed out that the *Pasiya* issued by the OCP-Makati was penned by Assistant City Prosecutor Estefano H. De La Cruz and approved by Senior Assistant City Prosecutor Edgardo G. Hirang, while the *Pabatid Sakdal* was penned by ACP De La Cruz, without any approval from any higher authority, albeit with a Certification claiming that ACP De La Cruz has prior written authority or approval from the City Prosecutor in filing the said Information. In this regard, petitioner claimed that nothing in the aforesaid *Pasiya* and *Pabatid Sakdal* would show that ACP De La Cruz and/or SACP Hirang had prior written authority or approval from the City Prosecutor to file or approve the filing of the Information against her. As such, the Information must be quashed for being tainted with a jurisdictional defect that cannot be cured.

The RTC denied petitioner's motion to quash for lack of merit. It found the Certification attached to the *Pabatid Sakdal* to have sufficiently complied with Section 4, Rule 112 of the Rules of Court. Petitioner moved for reconsideration, which was, however, denied. Aggrieved, petitioner elevated the matter to the CA *via* a petition for *certiorari.* The CA affirmed the RTC ruling.

ISSUE:

a) Whether or not the *Pasiya* is defective (NO)

b) Whether or not the *Pabatid Sakdal* is defective (YES)

RULING:

Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that the filing of a complaint or information requires a prior written authority or approval of the named officers therein before a complaint or information may be filed before the courts.

Thus, as a general rule, complaints or informations filed before the courts without the prior written authority or approval of the listed authorized officers renders the same defective and, therefore, subject to quashal pursuant to Section 3 (d), Rule 11 7 of the same Rules, to wit:

SECTION 3. *Grounds.* - The accused may move to quash the complaint or information on any of the following grounds:

x x x x

(d) **That the officer who filed the information had no authority to do so**;

x x x x (Emphasis and underscoring supplied)

In this relation, *People v. Garfin* firmly instructs that the filing of an Information by an officer without the requisite authority to file the same constitutes a jurisdictional infirmity which cannot be cured by silence, waiver, acquiescence, or even by express consent. Hence, such ground may be raised at any stage of the proceedings.

The CA correctly held that based on the wordings of Section 9 of RA 10071, which gave the City Prosecutor the power to "[i]nvestigate and/or ***cause to be investigated*** all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, ***and have the necessary information or complaint prepared or made and filed*** against the persons accused," he may indeed delegate his power to his subordinates as he may deem necessary in the interest of the prosecution service. The CA also correctly stressed that it is under the auspice of this provision that the City Prosecutor of Makati issued OCP-Makati Office Order No. 32, which gave division chiefs or review prosecutors "authority to approve or act on any resolution, order, issuance, other action, and any information recommended by any prosecutor for approval," without necessarily diminishing the City Prosecutor's authority to act directly in appropriate cases. By virtue of the foregoing issuances, the City Prosecutor validly designated SACP Hirang, Deputy City Prosecutor Emmanuel D. Medina, and Senior Assistant City Prosecutor William Celestino T. Uy as review prosecutors for the OCP-Makati.

In this light, the *Pasiya* or Resolution finding probable cause to indict petitioner of the crime charged, was validly made as it bore the approval of one of the designated review prosecutors for OCP-Makati, SACP Hirang, as evidenced by his signature therein.

Unfortunately, the same could not be said of the *Pabatid Sakdal* or Information filed before the RTC, as there was no showing that it was approved by either the City Prosecutor of Makati or any of the OCP Makati's division chiefs or review prosecutors. All it contained was a Certification from ACP De La Cruz which stated, among others, that *"DAGDAG KO PANG PINATUTUNAYAN na ang paghahain ng sakdal na ito ay may nakasulat na naunang pahintulot o pagpapatibay ng Panlunsod na Taga-Usig"* - which translates to "and that the filing of the Information is with the prior authority and approval of the City Prosecutor."

In the cases of *People v. Garfin, Turingan v. Garfin,* and *Tolentino v. Paqueo,* the Court had already rejected similarly-worded certifications, uniformly holding that despite such certifications, the Informations were defective as it was shown that the officers filing the same in court either lacked the authority to do so or failed to show that they obtained prior written authority from any of those authorized officers enumerated in Section 4, Rule 112 of the 2000 Revised Rules of Criminal Procedure.

Here, aside from the bare and self-serving Certification, there was no proof that ACP De La Cruz was authorized to file the *Pabatid Sakdal* or Information before the RTC by himself. Records are bereft of any showing that the City Prosecutor of Makati had authorized ACP De La Cruz to do so by giving him prior written authority or by designating him as a division chief or review prosecutor of OCP-Makati. There is likewise nothing that would indicate that ACP De La Cruz sought the approval of either the City Prosecutor or any of those authorized pursuant to OCP-Makati Office Order No. 32 in filing the *Pabatid Sakdal.*

In view of the foregoing circumstances, the CA erred in according the *Pabatid Sakdal* the presumption of regularity in the performance of official functions solely on the basis of the Certification made by ACP De La Cruz considering the absence of any evidence on record clearly showing that ACP De La

Cruz: *(a)* had any authority to file the same on his own; or *(b)* did seek the prior written approval from those authorized to do so before filing the Information before the RTC.

In conclusion, the CA erred in affirming the RTC's dismissal of petitioner's motion to quash as the *Pabatid Sakdal* or Information suffers from an incurable infirmity - that the officer who filed the same before the RTC had no authority to do so. Hence, the *Pabatid Sakdal* must be quashed, resulting in the dismissal of the criminal case against petitioner.

As a final note, it must be stressed that "[t]he Rules of Court governs the pleading, practice, and procedure in all courts of the Philippines. For the orderly administration of justice, the provisions contained therein should be followed by all litigants, but especially by the prosecution arm of the Government."

PERSONAL COLLECTION DIRECT SELLING, INC., *Petitioner*
-versus-
TERESITA L. CARANDANG, *Respondent*
G.R. No. 206958, THIRD DIVISION, November 8, 2017, LEONEN, *J.*

Thus, in granting or denying a motion to withdraw an information, the court must conduct a cautious and independent evaluation of the evidence of the prosecution and must be convinced that the merits of the case warrant either the dismissal or continuation of the action. In Baltazar v. People:

We have likewise held that once a case has been filed with the court, it is that court, no longer the prosecution, which has full control of the case, so much so that the information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.

FACTS:

Personal Collection filed a Complaint-Affidavit for estafa with unfaithfulness and/or abuse of confidence against Carandang before the Office of the City Prosecutor of Quezon City. After the preliminary investigation, the Assistant City Prosecutor filed an Information against Carandang before the RTC Quezon City. The trial court ordered that an arrest warrant be issued against Carandang.

However, Carandang filed a Motion for Reinvestigation, alleging that she did not appear during the preliminary investigation because she did not receive any subpoena from the Office of the City Prosecutor. The RTC granted Caranciang's Motion for Reinvestigation.

Carandang filed her Counter-Affidavit before the Office of the City Prosecutor, claiming that her failure to completely liquidate the cash advances was due to the sudden termination of her employment by Personal Collection. She also claimed that she did not receive any demand letter or any offer from Personal Collection to settle the case.

After receipt of petitioner's Reply-Affidavit, the Office of the City Prosecutor issued a Resolution recommending that the complaint against Carandang be dismissed. It found that Personal Collection's cause of action is anchored primarily on Carandang's failure to liquidate her remaining cash advances. It was, however, unconvinced that Carandang's failure to return the cash advances would be sufficient to hold her liable for estafa.

The prosecutor filed a Motion to Withdraw Information with the RTC, stating that the Office of the City Prosecutor found that there was lack of probable cause to hold Carandang liable for estafa. The Regional Trial Court, over petitioner's objection, issued an Order granting the Motion to Withdraw Information. According to the trial court, Carandang was able to explain her failure to account for the cash advances she had received in trust. Personal Collection's Motion for Reconsideration was denied by the Regional Trial. Upon Carandang's motion, the Regional Trial Court released the cash bond posted for Carandang's bail.

Personal Collection filed a Petition for *Certiorari* with the Court of Appeals. It argued that the trial court failed to make its own evaluation of the merits of the case and only relied on the prosecutor's recommendation that there was no probable cause to charge Carandang with estafa.

The Court of Appeals issued its Decision, dismissing the Petition for *Certiorari* for lack of merit. It found that the Regional Trial Court conducted an independent assessment of the facts of the case, basing its order to withdraw the Information on the pleadings filed by the parties. The Court of Appeals also found that Personal Collection was not deprived of the opportunity to oppose Carandang's Motion to Release Cash Bond.

ISSUE:

Whether or not the Regional Trial Court correctly allowed the withdrawal of the Information against Teresita L. Carandang upon a finding that there was a lack of probable cause (YES)

RULING:

When an information is filed in court, the court acquires jurisdiction over the case and has the authority to determine, among others, whether or not the case should be dismissed. The court is "the best and sole judge of what to do with the case before it." The dismissal of a criminal case due to lack of probable cause protects the accused from having to undergo trial based on insufficient evidence.

Judges must proceed with caution in dismissing cases for lack of probable cause since the evidence before them are preliminary in nature. When probable cause exists, the court must proceed with arraignment and trial. But should the evidence presented absolutely fail to support this finding of probable cause, the case should be dismissed. Whether it is to dismiss the case or to proceed with

trial, a judge's action must not impair "the substantial rights of the accused [or] the right of the State and the offended party to due process of law."

Judges must act with cautious discernment when asked to dismiss cases on the ground of the absence of probable cause to support the withdrawal or dismissal of an information. While the accused is constitutionally given a guarantee of presumption of innocence, there is also the concern for the right to due process of the prosecution. The balance in each case is not theoretical. . Rather, it will be the outcome of the proper appreciation of the evidence presented and a conscientious application by the judge of the proper burdens of proof and evidence. Likewise, the trial court must consider that trial is always available after arraignment and is a forum for the accused as much as it is for the prosecution to carefully examine the merits of the case. As a general proposition, once the information is filed and a warrant is issued after a judicial determination of probable cause, subsequent technical dismissals are inequitable and should generally be avoided.

Thus, in granting or denying a motion to withdraw an information, the court must conduct a cautious and independent evaluation of the evidence of the prosecution and must be convinced that the merits of the case warrant either the dismissal or continuation of the action. In *Baltazar v. People:*

We have likewise held that once a case has been filed with the court, it is that court, no longer the prosecution, which has full control of the case, so much so that the information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency. (Citation omitted)

The order granting the withdrawal of an information must state the judge's assessment of the evidence and reasons in resolving the motion. It must clearly show why the court's earlier assessment of probable cause was erroneous. The court should not merely accept the prosecution's findings and conclusions. Its independent judicial discretion in allowing the information to be withdrawn must not only be implied but must be palpable in its order. Should the court fail to faithfully exercise its judicial discretion, the order granting the withdrawal of the information is void. In extreme cases, arbitrary action by the trial court may lead to an administrative inquiry.

In the instant case, the trial court rendered a more satisfactory justification. A reading of the Order shows that the trial court made its own assessment of the prosecution's evidence as embodied in its January 29, 2010 Resolution. It sufficiently explained how the elements of estafa were not met based on the additional evidence presented by the accused at the reinvestigation before the Office of the City Prosecutor. The trial court also considered the opposition filed by petitioner to the Motion to Withdraw Information, giving even the private offended party the opportunity to be heard.

LIGAYA P. CRUZ, *Petitioner,*
-versus-
HON. RAUL M. GONZALEZ, ETC., DEVELOPMENT BANK OF THE PHILIPPINES, and COURT OF APPEALS. *Respondents.*
G.R. No. 173844, SECOND DIVISION, April 11, 2012, PEREZ, *J.*

Jurisprudence has established rules on the determination of probable cause. In the case of Galario v. Office of the Ombudsman, this Court held that:

xxx

xxx. [A] finding probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.

FACTS:

Hermosa Savings and Loans Bank, Inc. availed of forty (40) loans from the Development Bank of the Philippines pursuant to a Subsidiary Loan Agreement. In support of the loan agreement and applications, HSLBI, through bank officers and Atty. Ligaya P. Cruz, herein petitioner, as its legal counsel, submitted the required documents to assure DBP that the respective Investment Enterprises were actually existing and duly registered with the government.

Later, during the course of its examination of HSLBI's loan portfolio. BSP found out that most of HSLBI's loan documents were either forged or inexistent. In particular, the Transfer Certificates of Title of properties submitted as collaterals were found to be inexistent, registered in another person's name, or already foreclosed/mortgaged to another bank. The credit accounts assigned to DBP were in the names of non-existing Investment Enterprises.

Thus, DBP filed a complaint for forty counts of estafa through falsification of commercial documents or for large scale fraud or violation of Articles 315, 316(4) [as amended by Presidential Decree (P.D.) No. 1689] and 318 of the Revised Penal Code against the aforementioned officers of HSLBI and herein petitioner Atty. Ligaya P. Cruz.

Atty. Cruz was included in the complaint for the reason that she, as in-house legal counsel of HSLBI, rendered an opinion that all the purported Investment Enterprises were duly organized, validly existing and in good standing under Philippine laws and that they have full legal rights, power and authority to carry on their present business and for notarizing two deeds of assignment utilized as supporting documents.

In a Joint Resolution, the state prosecutors recommended the filing of informations for forty (40) counts of estafa under Article 315, paragraph 2(a) of the RPC in relation to P.D. 1689 against the respondent bank officers and herein petitioner.

The respondents in the complaint, including herein petitioner, filed a petition for review before the Department of Justice assailing the Joint Resolution. In a Resolution, then Undersecretary of the DOJ, Ma. Merceditas N. Gutierrez, dismissed the petition for review.

Respondents filed a motion for reconsideration of the dismissal of their petition. Then DOJ Secretary Simeon A. Datumanong, issued a resolution, partially granting the motion to the effect that the complaint against petitioner Atty. Cruz is dismissed.

DBP, thereafter, filed a motion for reconsideration of the above resolution. By Resolution, Acting Secretary Ma. Merceditas N. Gutierrez ordered the filing of informations for Estafa/Large Scale Fraud under Article 315, par. 2(a) of the RPC, as amended, in relation to P.D. 1689 against respondents. In the same resolution, she ordered the filing of informations against Atty. Cruz.

Respondents and herein petitioner moved for reconsideration. In a Resolution, Secretary Raul Gonzales partially granted their motion and ordered the filing against all respondents of informations only for forty (40) counts of estafa under Article 315, par. 2(a) of the RPC and not for large scale fraud under P.D. 1689.

Undaunted, Atty. Cruz filed a petition for certiorari before the CA seeking to nullify and set aside the resolution of the Secretary of Justice. The CA rendered the assailed decision dismissing the petition.

ISSUE:

Whether or not the CA erred in sustaining the Secretary of Justice in its ruling that there is probable cause to indict petitioner Atty. Cruz (NO)

RULING:

Petitioner based her argument on the alleged conflicting resolutions of the Office of the Secretary of Justice. She argues that she should not be held liable for the offense since she only signed a pro-forma opinion prepared by the DBP and merely notarized the documents submitted by HSLBI to DBP. On their face, she found no indication of any irregularity or any taint of illegality on the documents she signed.

Jurisprudence has established rules on the determination of probable cause. In the case of Galario v. Office of the Ombudsman, this Court held that:

xxx

xxx. [A] finding probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence

establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. (Italics in the original)

We affirm the CA decision in line with the principle of non-interference with the prerogative of the Secretary of Justice to review the resolutions of the public prosecutor in the determination of the existence of probable cause. For reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations. In the absence of any showing that the Secretary of Justice committed manifest error, grave abuse of discretion or prejudice, courts will not disturb its findings. Moreover, this Court will decline to interfere when records show that the findings of probable cause is supported by evidence, law and jurisprudence.

In the instant case, the Secretary of Justice found sufficient evidence to indict petitioner. It was adequately established by DBP and found by the Secretary of Justice that the funds would not have been released pursuant to the subsidiary loan agreement if HSLBI had no sub-borrowers/Investment Enterprises to speak of. As it turned out, not only were the collaterals submitted inexistent, all the purported sub-borrowers/Investment Enterprises were also fictitious and inexistent.

Moreover, it is evident that petitioner's opinion was instrumental in the deceit committed against DBP. As a lawyer and in-house legal counsel of HSLBI, it is highly doubtful that she would have affixed her signature without knowing that there were defects in those documents.

As aptly found by the Office of the Chief State Prosecutor:

xxx

Insofar as respondent Atty. Ligaya P. Cruz is concerned, her claim of innocence is difficult to sustain. Being the wife of respondent Benjamin J. Cruz (a HSLBI bank officer) and a lawyer at that, she should have refrained or inhibited from rendering an opinion that is totally in contravention of what had actually transpired. Her legal opinion that the forty (40) loan applicants are legally existing and in good standing necessarily caused damage and injury to complainant DBP. As the wife of then president of HSLBI, her having an in-depth knowledge of the operations and transactions appurtenant to the bank including, but not limited to, the inexistent investment enterprises is not remote. (Emphasis and underline supplied)

IRIS KRISTINE BALOIS ALBERTO and BENJAMIN D. BALOIS, *Petitioners,*
-versus-
THE HON. COURT OF APPEALS, ATTY. RODRIGO A. REYNA, ARTURO S. CALIANGA, GIL ANTHONY M. CALIANGA, JESSEBEL CALIANGA, and GRACE EVANGELISTA, *Respondents.*
G.R. No. 182130, SECOND DIVISION, June 19, 2013, PERLAS-BERNABE, *J.*

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution "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."

FACTS:

Three incidents led to the filing of several complaint-affidavits.

A. Incidents of December 28, 2001

Petitioners alleged that at around midnight of the above date, respondent Gil Anthony Calianga (Gil) called petitioner Iris Kristine Alberto (Iris), then sixteen (16) years old, informing her that he was at their garage with some food and drinks. Due to Gil's insistence, Iris finally went out to meet Gil and thereafter, took the food and drinks which he brought. Iris eventually felt weak and dizzy and thus, tried to return to her room. Gil assisted Iris and when they reached the room, he laid her on the bed. Consequently, Gil covered Iris' mouth with a pillow and soon after, he succeeded in having sexual intercourse with her. Gil warned Iris not to tell anyone about what happened or else he would kill her.

By way of rebuttal, respondents averred that Gil and Iris met at the Mormon Church in Muntinlupa City and became sweethearts in 2001. They eventually developed an amorous physical relationship and on the evening of December 28, 2001, secretly slept together for the first time in Iris' own bedroom.

B. Incidents of April 23 to 24, 2002

On April 23, 2002, Gil called Iris, then seventeen (17) years old, telling her that he would pick her up for them to go to church in order to play volleyball. They proceeded to Camella to meet Gil's sister, respondent Jessebel Calianga (Jessebel), and her friend, respondent Grace Evangelista (Grace). At the outset, Iris thought they would be going to church for volleyball practice; but instead, Gil, while poking a knife at Iris' side, told her that they were headed to a different destination. Eventually, they reached a McDonald's restaurant located in San \Pedro, Laguna where they transferred to a car driven by Grace's common law husband. They then returned to Camella and stayed with a relative of Grace where they had dinner. While having dinner, Iris overheard respondent Atty. Rodrigo Reyna (Atty. Reyna) giving instructions to Jessebel to take Iris to Marikina City. A little later, Jessebel and Grace led Gil and Iris to a tree house where Gil forced her to enter a room. She tried to resist but he threatened to kill her if she did not accede. Left with no option, Iris entered the room where Gil, holding her at knifepoint, succeeded in once again having sexual intercourse with her.

The following day, Atty. Reyna arrived and instructed Iris to tell her relatives, who had been worriedly looking for her, that she voluntarily went with Gil; that she was treated with kindness; and that everything that happened was to her own liking because of her love for Gil. Thereafter, Atty. Reyna called up her Auntie Vilma and Uncle Albert and agreed to meet at Chowking-Poblacion where Iris was finally released to her grandfather, petitioner Benjamin Balois (Benjamin).

C. Incidents of June 23 to November 9, 2003

On June 23, 2003, Iris was abducted in front of Assumption College. This time, Gil conspired with Atty. Reyna and respondent Arturo Calianga (Arturo), to take Iris in order to prevent her from appearing at the preliminary investigation in I.S. No. 02-G-03020-22. In the afternoon of the same day, Iris' family brought Police Anti-Crime and Emergency Response (PACER) agents to Arturo's house. Upon their arrival, Grace told them that Gil left with some clothes and that he and Iris eloped and would proceed to Cagayan de Oro City.

On June 27, 2003, Gil, with the help of two men, brought Iris to Cagayan de Oro City and there, held her captive in a small room with a small mat, near a pigpen. They controlled her movements. Gil raped her almost every day and would beat her up whenever she resisted. Also, Gil often told Iris that he would have her entire family killed by his Moslem relatives.

Disposition of Criminal Complaints

In view of the incidents that transpired on December 28, 2001 and April 23 to 24, 2002, Benjamin filed a criminal complaint for Rape, Serious Illegal Detention and Child Abuse under Section 5(b), Article III of RA 7610 against Gil, Atty. Reyna, Jessebel and Grace before the Office of the City Prosecutor of Muntinlupa (Muntinlupa Pros. Office), docketed as **I.S. No. 02-G-03020-22.**

Subsequently, Benjamin filed a second complaint against Gil, Atty. Reyna and Arturo for Kidnapping and Serious Illegal Detention, Grave Coercion and Obstruction of Justice before the Office of the City Prosecutor of Makati (Makati Pros. Office), docketed as **I.S. No. 03-G-14072-75.** As recommended, criminal informations against

On December 15, 2003, Iris, assisted by members of the groups Volunteers Against Crime and Corruption and Gabriela, proceeded to the DOJ Task Force on Women and Children Protection (DOJ Task Force) and filed a third complaint against Gil for Forcible Abduction with Rape and Obstruction of Justice, punished under Presidential Decree No. 1829, docketed as **I.S. No. 2004-127.**

First, **in I.S. No. 02-G-03020-22**, State Prosecutor II Lilian Doris S. Alejo (Pros. Alejo) of the Muntinlupa Pros. Office issued a Resolution, dismissing the charges for Serious Illegal Detention and Rape against Gil, Atty. Reyna, Jessebel and Grace for insufficiency of evidence. Pros. Alejo found that the pieces of evidence showed that Gil and Iris were sweethearts and the sexual intercourse that transpired between them was consensual. Likewise, she observed that the story narrated by Iris was farfetched, intimating that it was unbelievable that Iris would still go to volleyball practice with Gil after the first rape he allegedly committed against her.

Nonetheless, Pros. Alejo recommended the filing of informations for Child Abuse against Gil for having sexual intercourse with Iris on December 28, 2001 and April 23, 2003 by taking advantage of her minority and his moral influence as a pastor of their church. As recommended, criminal informations for Child Abuse against Gil were filed.

Second, in **I.S. No. 03-G-14027-75**, 2nd Assistant City Prosecutor Henry M. Salazar (Pros. Salazar) of the Makati Pros. Office issued a Resolution, equally dismissing the charges for Kidnapping and Serious Illegal Detention, Grave Coercion and Obstruction of Justice against Gil, Atty. Reyna and Arturo for lack of merit and/or insufficiency of evidence.

Third, in I**.S. No. 2004-127**, State Prosecutor Zenaida M. Lim (Pros. Lim) of the DOJ Task Force issued a Resolution, also dismissing the third case for Forcible Abduction with Rape and Obstruction of Justice against Gil, Atty. Reyna and Arturo on the ground of insufficiency of evidence. Pros. Lim found no probable cause for the crimes charged, holding that Iris was not a credible witness because of her flip-flopping testimonies and the serious contradictions therein. She observed that the fact that Iris admitted that she went back to school and even got exemplary grades confirmed that she was of sound mind and acted with volition when she went away with Gil on June 23, 2003.

Benjamin moved for reconsideration which was, however, denied in a Resolution dated July 30, 2004. Aggrieved, Iris and Benjamin appealed the dismissal of all the foregoing charges to the DOJ. In its Amended Resolution, the DOJ Secretary resolved the consolidated petitions in I.S. No. 02-G-03020-22, I.S. No. 03-G-14027-75 and I.S. No. 2004-127, finding probable cause to charge: (a) Gil for Rape, in relation to Section 5(b), Article III of RA 7610, on account of the December 28, 2001 incidents; (b) Gil, Jessebel, Atty. Reyna and Grace for one (1) count each of Serious Illegal Detention and Rape, in relation to Section 5(b), Article III of RA 7610, on account of the April 23 to 24, 2002 incidents; and (c) Gil, Atty. Reyna and Arturo for one (1) count each of Forcible Abduction with Rape on account of the June 23 to November 9, 2003 incidents.

Meanwhile, on February 5, 2007, two (2) separate criminal Informations were filed for Forcible Abduction with Rape against Gil, Arturo, and Atty. Reyna, docketed as Criminal Case No. 07-122, and for Serious Illegal Detention with Rape against Gil, Atty. Reyna, Jessebel, and Grace, docketed as Criminal Case No. 07-128.

For alleged reasons of extreme urgency, respondents filed a petition for certiorari with the CA, docketed as CA-G.R. SP. No. 97863, while the resolution of their January 18, 2007 Joint Motion for Reconsideration was still pending.

In the interim, a warrant of arrest was issued on February 23, 2007, by Presiding Judge Philip A. Aguinaldo of the RTC of Muntinlupa City, Branch 207 against all the accused in Criminal Case No. 07-128. Later, on January 14, 2008, Acting Presiding Judge Romulo SG. Villanueva of the RTC, Muntinlupa City, Branch 256 issued a warrant of arrest against all the accused in Criminal Case No. 07-122.

The CA gave due course to respondents' petition for certiorari and on January 11, 2008 rendered its Decision which revoked the DOJ Resolutions. It ruled that the DOJ Secretary gravely abused his discretion in reversing the resolutions of no less than three (3) investigative bodies which all found

lack of probable cause and in disregarding the overwhelming, credible and convincing evidence which negated the charges filed against respondents.

ISSUE:

Whether or not the CA erred in revoking the DOJ Resolutions based on grave abuse of discretion (QUALIFIED)

RULING:

The petitions are partly meritorious.

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution "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."

As held in PCGG v. Jacobi:

In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained. (Emphasis and underscoring supplied)

Guided by the foregoing considerations, the Court therefore holds as follows:

First, the DOJ Secretary did not gravely abuse his discretion in finding that probable cause exists for the crime of Rape against Gil, Atty. Reyna and Arturo.

In particular, with respect to Gil, Iris averred that on December 28, 2001, Gil drugged her and thereafter, through force and intimidation, succeeded in having sexual intercourse with her. She also claimed that on April 23, 2002, Gil, again through force and intimidation, had carnal knowledge of her in the tree house. Likewise, beginning June 27, 2003, Gil raped her almost every day up until her rescue on November 9 of the same year. In defense, records show that Gil never denied any of the

above-stated sexual encounters, but merely maintained the he and Iris were sweethearts, as shown by several love letters and text messages between them.

The Court finds no grave abuse of discretion on the part of the DOJ Secretary, as the elements of rape, more likely than not, appear to be present.

Similarly, the Court finds no grave abuse of discretion in the DOJ Secretary's finding of probable cause for Rape against Atty. Reyna and Arturo, but only insofar as the June 23 to November 9, 2003 incidents are concerned.

There appears to be no ample justification to support the finding of probable cause against Atty. Reyna and Arturo, with respect to the rape incidents of December 28, 2001 and April 23, 2002, as well as against Jessebel and Grace for all three (3) incidents. In view of the The Amended Resolution is bereft of any showing as to how the particular acts of the foregoing respondents figured into the common design of raping Iris and as such, the Court finds no reason to charge them for the same.

At this juncture, the Court observes that the DOJ charged Gil for Rape in relation to Child Abuse under Section 5(b), Article III of RA 7610 on account of the December 28, 2001 and April 23, 2002 incidents. Existing jurisprudence, however, proscribes charging an accused for both crimes, rather, he may be charged only for either.

In this light, while the Court also finds that probable cause exists for the crime of Child Abuse against Gil for the same rape incidents of December 28, 2001 and April 23, 2002 in view of the substantial identity of its elements with that of Rape, he cannot be charged for both. Records disclose that there are standing charges against Gil for Child Abuse in Criminal Case Nos. 03-551 and 03-549, respectively on account of the same occurrences. Thus, so as not to violate his right against double jeopardy, the Court finds it proper to dismiss the charges of Rape against Gil with respect to the December 28, 2001 and April 23, 2002 incidents considering the subsisting charges of Child Abuse as herein discussed.

Notably, Gil, as well as Atty. Reyna and Arturo, cannot be charged for Child Abuse with respect to the June 23 to November 9, 2003 incidents since Iris had ceased to be a minor by that time. Likewise, Atty. Reyna and Arturo cannot be indicted for Child Abuse in connection with the December 28, 2001 and April 23, 2002 incidents as there appears to be no sufficient bases to support the DOJ Secretary's finding of conspiracy.

Second, the Court further holds that the DOJ Secretary gravely abused his discretion in finding that probable cause exists for the crime of Serious Illegal Detention. Aside from Iris's bare allegations, records are bereft of any evidence to support a finding that Iris was illegally detained or restrained of her movement. On the contrary, based on Pros. Lim's Resolution dated November 8, 2004, several disinterested witnesses had testified to the fact that Iris was seen freely roaming in public with Gil, negating the quintessential element of deprivation of liberty.

Third, the DOJ Secretary also committed grave abuse of discretion in finding probable cause for the crime of Forcible Abduction with Rape. As earlier discussed, there lies no evidence to prove that Iris

was restrained of her liberty during the period of her captivity from June 23 to November 9, 2003 thus, denying the element of abduction. More importantly, even if it is assumed that there was some form of abduction, it has not been shown – nor even sufficiently alleged – that the taking was done with lewd designs.

ROSALINDA PUNZALAN, RANDALL PUNZALAN AND RAINIER PUNZALAN, *Petitioners,*
-versus-
MICHAEL GAMALIEL J. PLATA AND RUBEN PLATA, *Respondents.*
G.R. No. 160316, THIRD DIVISION, September 2, 2013, MENDOZA, *J.*

Succinctly, the public prosecutor is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime and should be held for trial. Consequently, the Court considers it a sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the DOJ a wide latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of the supposed offenders. Thus, the rule is that this Court will not interfere in the findings of the DOJ Secretary on the insufficiency of the evidence presented to establish probable cause unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction.

FACTS:

The Punzalan and the Plata families were neighbors. On August 13, 1997, Dencio dela Peña, a house boarder of the Platas, was in front of a store near their house when the group of Rainier Punzalan, Randall Punzalan, Ricky Eugenio, Jose Gregorio, Alex "Toto" Ofrin, and several others arrived. Ricky Eugenio shouted at Dela Peña, "*Hoy, kalbo, saan mo binili and sumbrero mo*?" Dela Peña replied, "*Kalbo nga ako, ay pinagtatawanan pa ninyo ako*." Irked by the response, Jose Gregorio slapped Dela Peña while Rainier punched him in the mouth. Thereafter, Alex "Toto" Ofrin kicked Dela Peña and tried to stab him with a *balisong* but missed because he was able to run. The group chased him.

While Dela Peña was fleeing, he met Robert Cagara, the Platas' family driver, who was carrying a gun. He grabbed the gun from Cagara and pointed it to the group chasing him in order to scare them. Michael Plata, who was nearby, intervened and tried to wrestle the gun away from Dela Peña. The gun accidentally went off and hit Rainier Punzalan on the thigh. Shocked, Dela Peña, Cagara and Plata ran towards the latter's house and locked themselves in. The group ran after them and when they got to the Platas' house, shouted, "*Lumabas kayo d'yan, putang ina ninyo! Papatayin namin kayo*!" Dela Peña, Cagara, and Plata left the house through the back door and proceeded to the police station to seek assistance.

Subsequently, Rainier Punzalan filed a criminal complaint against Michael Plata for Attempted Homicide and against Robert Cagara for Illegal Possession of Firearm. In turn, Plata, Cagara and Dela Peña filed several counter-charges for grave oral defamation, grave threats, robbery, malicious mischief and slight physical injuries against petitioners Rosalinda, Randall, Rainier, and several individuals before the Office of the City Prosecutor, Mandaluyong City.

The Office of the City Prosecutor, in its Joint Resolution, dismissed the complaints filed against the petitioners for lack of sufficient basis both in fact and in law.

Plata, together with his co-complainants, filed their separate petitions before the DOJ. The DOJ modified the Joint Resolution of the Office of the City Prosecutor and ordered the filing of separate informations for Slight Oral Defamation, Light Threats, Attempted Homicide, Malicious Mischief, and Theft against Rosalinda, Rainier, Randall and the other respondents in the above cases. The latter filed a motion for reconsideration. Upon review, the DOJ reconsidered its findings and ruled that there was no probable cause. In its Resolution, the DOJ directed the Office of the City Prosecutor to withdraw the informations.

The complainants moved for a reconsideration of the Resolution but the DOJ denied the motion in its Resolution. The complainants elevated the matter to the CA by way of certiorari ascribing grave abuse of discretion on the part of the DOJ Secretary which ordered the withdrawal of the separate informations for Slight Oral Defamation, Other Light Threats, Attempted Homicide, Malicious Mischief and Theft.

The CA annulled and set aside the Resolutions of the DOJ and reinstated its Resolution, ordering the filing of separate informations against the petitioners.

ISSUE:

Whether or not the CA erred in annulling the DOJ Resolutions (YES)

RULING:

The well-established rule is that the conduct of preliminary investigation for the purpose of determining the existence of probable cause is a function that belongs to the public prosecutor. Section 5, Rule 110 of the Rules of Court, as amended, provides:

Section 5. Who must prosecute criminal action. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The prosecution of crimes lies with the executive department of the government whose principal power and responsibility is to see that the laws of the land are faithfully executed. "A necessary component of this power to execute the laws is the right to prosecute their violators." Succinctly, the public prosecutor is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime and should be held for trial.

Consequently, the Court considers it a sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the DOJ a wide latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of the supposed offenders.

Thus, the rule is that this Court will not interfere in the findings of the DOJ Secretary on the insufficiency of the evidence presented to establish probable cause unless it is shown that the questioned acts were done in a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion, thus "means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The party seeking the writ of certiorari must establish that the DOJ Secretary exercised his executive power in an arbitrary and despotic manner, by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law.

In the present case, there was no clear evidence of grave abuse of discretion committed by the DOJ when it set aside its March 23, 2000 Resolution and reinstated the July 28, 1998 Resolution of the public prosecutor. The DOJ was correct when it characterized the complaint for attempted murder as already covered by two (2) other criminal cases. As to the other complaints, the Court agrees with the DOJ that they were weak and not adequately supported by credible evidence. Thus, the CA erred in supplanting the prosecutor's discretion by its own.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,*
-versus-
MARCELINO DADAO, ANTONIO SULINDAO, EDDIE MALOGSI (deceased) and ALFEMIO MALOGSI,* *Accused-Appellants.*
G.R. No. 201860, FIRST DIVISION, January 22, 2014, LEONARDO-DE CASTRO, *J.*

In People v. De la Rosa, we yet again expounded on this principle in this wise:

[T]he issue raised by accused-appellant involves the credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x.

FACTS:

The genesis of this court case can be traced to the charge of murder against the appellants in the trial court via an Information. The accusatory portion of said indictment reads:

That on or about the 11th day of July 1993, at 7:30 in the evening more or less at barangay Salucot, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [herein respondents], conspiring, confederating and mutually helping with (sic) one another, with intent to kill, by means of treachery, armed with guns and bolos, did then and there wilfully, unlawfully and criminally attack, assault and sho[o]t PIONIO YACAPIN, hitting his back and left leg, inflicting wounds that cause[d] his death thereafter.

x x x

During arraignment all four accused pleaded "NOT GUILTY" to the charge leveled against them.

Prosecution's first witness, Ronie Dacion, a 14-year old stepson of the victim, Pionio Yacapin, testified that on July 11, 1993 at about 7:30 in the evening he saw accused Marcelino Dadao, Antonio Sulindao, Eddie Malogsi and [A]lfemio Malogsi helping each other and with the use of firearms and bolos, shot to death the victim, Pionio Yacapin in their house at Barangay Salucot, Talakag, Bukidnon.

The testimony of the second witness for the prosecution, Edgar Dacion, a 12-year old stepson of the victim, corroborates the testimony of his older brother Ronie Dacion. Prosecution's third witness, Nenita Yacapin, the widow of the victim, also corroborates the testimony of the prosecution's first and second witness.

Prosecution's fourth witness, Bernandino Signawan, testified that at about 10:00 o'clock in the evening of July 11, 1993, Ronie and Edgar Dacion reached to [sic] his house and related to him that their stepfather was killed by accused Eddie Malogsi, [A]lfemio Malogsi, Marcelino Dadao and Antonio Sulindao. Witness Signawan further testified that on the following morning, he and the other people in Ticalaan including the barangay captain, Ronie and Edgar Dacion returned to the house of the victim and found the latter already dead and in the surrounding [area] of the house were recovered empty shells of firearms.

After trial was concluded, a guilty verdict was handed down by the trial court finding appellants guilty beyond reasonable doubt of murdering Pionio Yacapin. On appeal, the Court of Appeals affirmed the appealed decision.

ISSUE:

Whether or not the eyewitness testimonies presented by the prosecution, specifically that of the two stepsons (Ronie and Edgar Dacion) and the widow (Nenita Yacapin) of the deceased victim, Pionio Yacapin, are credible enough to be worthy of belief (YES)

RULING:

We have consistently held in jurisprudence that the resolution of such a factual question is best left to the sound judgment of the trial court and that, absent any misapprehension of facts or grave abuse of discretion, the findings of the trial court shall not be disturbed. In People v. De la Rosa, we yet again expounded on this principle in this wise:

[T]he issue raised by accused-appellant involves the credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x.

Jurisprudence also tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the case at bar, no imputation of improper motive on the part of the prosecution witnesses was ever made by appellants.

Furthermore, appellants contend that the prosecution witnesses made inconsistent and improbable statements in court which supposedly impair their credibility, such as whether or not the stepsons of the victim left for Ticalaan together to report the incident, whether the accused were still firing at the victim when they left or not, and whether or not the accused went after the stepsons after shooting the victim. We have reviewed the relevant portions of the transcripts pointed out by the appellants and have confidently arrived at the conclusion that these are matters involving minor inconsistencies pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue. We elucidated on this subject in Avelino v. People, to wit:

Given the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. 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-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (Emphasis omitted.)

Notwithstanding their conflicting statements on minor details, Ronie, Edgar and Nenita positively identified appellants as the perpetrators of the dastardly crime of murder committed on the victim which they categorically and consistently claimed to have personally witnessed.

PCGG CHAIRMAN MAGDANGAL B. ELMA and PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *Petitioners,*

-versus-

REINER JACOBI, CRISPIN REYES, MA. MERCEDITAS N. GUTIERREZ, in her capacity as Undersecretary of the Department of Justice, *Respondents.*

G.R. No. 155996, SECOND DIVISION, June 27, 2012, BRION, *J.*

In Orosa v. Roa, we observed: There is compelling reason to believe, however, that the exclusion of the DOJ from the list is deliberate, being in consonance with the constitutional power of control lodged in the President over executive departments, bureaus and offices. This power of control, which even Congress cannot limit, let alone withdraw, means the power of the Chief Executive to review, alter, modify, nullify, or set aside what a subordinate, e.g., members of the Cabinet and heads of line agencies, had done in the performance of their duties and to substitute the judgment of the former for that of the latter. [citations omitted, emphasis ours]

However, Memorandum Circular No. 58 of the Office of the President bars an appeal from the decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases via a petition for review, except for those involving offenses punishable by reclusion perpetua to death. Therefore, a party aggrieved by the DOJ's resolution - affirming or reversing the finding of the investigating prosecutor in a preliminary investigation involving an offense not punishable by reclusion perpetua to death - cannot appeal to the Office of the President and is left without any plain, speedy and adequate remedy in the ordinary course of the law. This leaves a certiorari petition as the only remedial avenue left. However, the petitioner must allege and show that the DOJ acted with grave abuse of discretion in granting or denying the petition for review.

FACTS:

On two occasions, then PCGG Commissioner, and later Chairman, David M. Castro, purportedly acting for the PCGG, agreed to pay Jacobi a fee of ten percent (10%) of any amount actually recovered and legally turned over to the Republic of the Philippines from the ill-gotten wealth of Ferdinand E. Marcos and/or his family, associates, subordinates and cronies, based on the information and evidence that Jacobi would furnish the PCGG. A few years later, a similar letter was sent by the new PCGG Chairman, Felix M. de Guzman, to Jacobi, confirming the PCGG's promise to pay Jacobi and his intelligence group a 10% fee for the US$13.2 billion ill-gotten wealth of Former President Ferdinand E. Marcos, his family, trustee or fronts in Union Bank of Switzerland (UBS) still/now being claimed and recovered by the Philippine Government.

The respondents filed with the Sandiganbayan a verified Petition for Mandamus, Prohibition and Certiorari (with Prayer for a Writ of Preliminary Mandatory and Prohibitory Injunction) (Sandiganbayan petition) against the petitioners. Atty. Reyes acted as Jacobi's counsel. The contents of the PCGG letters and the De Guzman letter, among others, were substantially reproduced in the Sandiganbayan petition and were attached as annexes.

Later, Atty. Reyes filed an Urgent Manifestation with the Sandiganbayan, withdrawing the De Guzman letter and the Gunigundo letter as annexes of the Sandiganbayan petition. Atty. Reyes explained that he had been prompted to withdraw these letters after he learned of reports questioning the authenticity of these documents. Atty. Reyes asserted that Jacobi had nothing to do with the preparation nor with the attachment of these letters to the Sandiganbayan petition.

The attachment, as annexes, of the De Guzman letter to the Sandiganbayan petition elicited a legal response from the PCGG. Based on the affidavits executed by Chairman De Guzman, Director Danilo

Daniel of the Finance and Administration Department of the PCGG, and Lilia Yanga, what appears as their signatures and initials at the bottom of the De Guzman letter actually pertain to their signatures and initials affixed to another letter (dated August 25, 1998) sent by Chairman De Guzman to the Philippine Ambassador to Switzerland, Tomas Syquia. This August 25, 1998 letter, however, had nothing to do with any contingency agreement with Jacobi and/or Atty. Reyes. Lourdes Magno a Records Officer, and Sisa Lopez also executed affidavits stating that the PCGG has no record of the De Guzman letter. All of these affiants were then PCGG employees.

On March 22, 1999, Chairman Elma filed an affidavit-complaint with the Department of Justice (DOJ), charging the respondents with falsification and with use of falsified document (under Article 171, paragraph 2 and Article 172, paragraphs. 1 and 3 of the Revised Penal Code). The petitioners attached to the complaint the NBI report and the affidavits of the PCGG employees.

Atty. Reyes filed his counter-affidavit, adopting the explanation and allegations contained in his Urgent Manifestation in pleading for the dismissal of the criminal case. For his part, Jacobi, through Atty. Cynthia Peñalosa, denied any participation in the falsification of the De Guzman letter.

In a Resolution, Senior State Prosecutor Jude Romano found probable cause against the respondents on the basis of two legal presumptions - that (i) the possessor and user of a falsified document is the forger; and (ii) whoever stands to benefit from the forgery is the author thereof - which the respondents failed to overthrow. Thus, he recommended the filing of the corresponding information.

After an interchange of several motions for reconsideration from the respondents and the corresponding resolutions from Prosecutor Romano, Chief State Prosecutor Jovencito Zuño (i) approved the recommendation of Prosecutor Romano to grant Jacobi's second MR and Atty. Reyes' pending motion for reconsideration, and (ii) dismissed the complaint against the respondents. The petitioners moved for reconsideration of the third resolution but its motion was denied in a January 9, 2002 resolution.

On April 29, 2002, the PCGG filed a petition for review with the DOJ Secretary. Usec. Gutierrez, acting "for the Secretary of Justice" Hernando Perez, denied the petition for review on the ground that no prima facie case exists against the respondents. With the denial of the petitioners' motion for reconsideration, the petitioners went directly to this Court on a petition for certiorari.

ISSUE:

Whether or not certiorari under Rule 65 is the proper remedy to question the DOJ's determination of probable cause (YES)

RULING:

The respondents claim that a petition for review under Rule 43 is the proper remedy in questioning the assailed DOJ resolutions.

The respondents are mistaken.

By weighing the evidence submitted by the parties in a preliminary investigation and by making an independent assessment thereof, an investigating prosecutor is, to that extent, performing functions of a quasi-judicial nature in the conduct of a preliminary investigation. However, since he does not make a determination of the rights of any party in the proceeding, or pronounce the respondent's guilt or innocence (thus limiting his action to the determination of probable cause to file an information in court), an investigating prosecutor's function still lacks the element of adjudication essential to an appeal under Rule 43.

Additionally, there is a "compelling reason" to conclude that the DOJ's exclusion from the enumeration of quasi-judicial agencies in Rule 43 of the Rules of Court is deliberate. In Orosa v. Roa, we observed:

There is compelling reason to believe, however, that the exclusion of the DOJ from the list is deliberate, being in consonance with the constitutional power of control lodged in the President over executive departments, bureaus and offices. This power of control, which even Congress cannot limit, let alone withdraw, means the power of the Chief Executive to review, alter, modify, nullify, or set aside what a subordinate, e.g., members of the Cabinet and heads of line agencies, had done in the performance of their duties and to substitute the judgment of the former for that of the latter.

Being thus under the control of the President, the Secretary of Justice, or, to be precise, his decision is subject to review of the former. In fine, recourse from the decision of the Secretary of Justice should be to the President, instead of the CA, under the established principle of exhaustion of administrative remedies. x x x. Notably, Section 1 x x x of Rule 43 includes the Office of the President in the agencies named therein, thereby accentuating the fact that appeals from rulings of department heads must first be taken to and resolved by that office before any appellate recourse may be resorted to. [citations omitted, emphasis ours]

However, Memorandum Circular No. 58 of the Office of the President bars an appeal from the decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases via a petition for review, except for those involving offenses punishable by reclusion perpetua to death. Therefore, a party aggrieved by the DOJ's resolution - affirming or reversing the finding of the investigating prosecutor in a preliminary investigation involving an offense not punishable by reclusion perpetua to death - cannot appeal to the Office of the President and is left without any plain, speedy and adequate remedy in the ordinary course of the law. This leaves a certiorari petition as the only remedial avenue left. However, the petitioner must allege and show that the DOJ acted with grave abuse of discretion in granting or denying the petition for review.

We also reject the respondents' allegation that the present petition suffers from a fatal procedural defect for failure to implead the DOJ (or its appropriate official) as an indispensable party.

Unlike a Rule 45 petition, one filed under Rule 65 petition requires the petitioner to implead as public respondent the official or agency whose exercise of a judicial or quasi-judicial function is allegedly tainted with grave abuse of discretion. Contrary to the respondents' assertion, the petition for certiorari filed by the petitioners with the Court impleaded Usec. Gutierrez, who, as then Justice

Undersecretary, issued the assailed resolutions "for the Secretary of Justice." While the DOJ did not formally enter its appearance in this case, or file any comment or memoranda, the records show that the Court issued resolutions, addressed to the DOJ as a party, to submit the appropriate responsive pleadings. As an extraordinary remedy, Rule 65 of the Rules of Court does not require that summons be issued to the respondent; the service upon him of an order to file its Comment or Memorandum is sufficient.

LIZA L. MAZA, SATURNINO C. OCAMPO, TEODORO A. CASINO, AND RAFAEL V. MARIANO, *Petitioners*
-versus-
HON. EVELYN A. TURLA, in her capacity as Presiding Judge of Regional Trial Court of Palayan City, Regional Trial Court of Palayan City, in his capacity as Officer-in-Charge Provincial Prosecutor, ANTONIO LL. LAPUS, JR., EDISON *v*. RAFANAN, and EDDIE C. GUTIERREZ, in their capacity as members of the panel of investigating prosecutors, and RAUL M. GONZALEZ, in his capacity as Secretary of Justice, *Respondents*
G.R. No. 187094, SECOND DIVISION, February 15, 2017, LEONEN, *J.*

Upon filing of an information in court, trial court judges must determine the existence or non-existence of probable cause based on their personal evaluation of the prosecutor's report and its supporting documents. They may dismiss the case, issue an arrest warrant, or require the submission of additional evidence. However, they cannot remand the case for another conduct of preliminary investigation on the ground that the earlier preliminary investigation was improperly conducted.

Regardless of Judge Turla's assessment on the conduct of the preliminary investigation, it was incumbent upon her to determine the existence of probable cause against the accused after a personal evaluation of the prosecutors' report and the supporting documents. She could even disregard the report if she found it unsatisfactory, and/or require the prosecutors to submit additional evidence. There was no option for her to remand the case back to the panel of prosecutors for another preliminary investigation. In doing so, she acted without any legal basis.

FACTS:

Petitioners Liza L. Maza, Satumino C. Ocampo, Teodoro A. Casifio, and Rafael V. Mariano (petitioners) are former members of the House of Representatives. Liza represented Gabriela Women's Party (Gabriela), Saturnino and Teodoro represented Bayan Muna Party-List (Bayan Muna), while Rafael represented Anakpawis Party-List (Anakpawis).

In three letters, Police Senior Inspector Arnold M. Palomo (Inspector Palomo) referred to the Provincial Prosecutor of Cabanatuan City, Nueva Ecija, three (3) cases of murder against petitioners and 15 other persons. The suspects, including petitioners, were allegedly responsible for the death of Carlito Bayudang, Jimmy Peralta, and Danilo Felipe. His findings show that the named individuals conspired, planned, and implemented the killing of the supporters of AKBAYAN Party List (AKBAYAN), a rival of Bayan Muna and Gabriela.

On February 2, 2007, Investigating Prosecutor Antonio Ll. Lapus, Jr. issued a subpoena requiring petitioners to testify at the hearings scheduled on February 16 and 23, 2007.

Petitioners filed a Special Appearance with Motion to Quash Complaint/Subpoena and to Expu[ng]e Supporting Affidavits. They claimed that, "the preliminary investigation conducted was highly irregular, and that the subpoena issued against [them] was patently defective amounting to a denial of their rights to due process." The panel of investigating prosecutors denied petitioners' motion and ordered the submission of their counter-affidavits.

Subsequently, the panel of prosecutors issued a Joint Resolution, reviewed and approved by Officer-in-charge Provincial Prosecutor Floro F. Florendo (Prosecutor Florendo). The panel found probable cause for murder in the killing of Carlito Bayudang and Jimmy Peralta, and for kidnapping with murder in the killing of Danilo Felipe, against the nineteen 19 suspects. On the same day, two (2) Informations for murder were filed before the Regional Trial Court of Palayan City, Branch 40 in Nueva Ecija, (Palayan cases) and an Information for kidnapping with murder was filed in Guimba, Nueva Ecija (Guimba case).

Petitioners filed a Motion for Judicial Determination of Probable Cause with Prayer to Dismiss the Case Outright on the Guimba case. After the hearing on the motion and submission of the parties' memoranda, Judge Napoleon R. Sta. Romana issued an Order, dismissing the case for lack of probable cause.

Petitioners also filed a Motion for Judicial Determination of Probable Cause with Prayer to Dismiss the Case Outright on the Palayan cases.

After the motion was heard by the Regional Trial Court of Palayan City, Presiding Judge Evelyn A. Atienza-Turla (Judge Turla) issued an Order, holding that "the proper procedure in the conduct of the preliminary investigation was not followed in [the Palayan] cases." Judge Turla ordered the remand of the Palayan cases back to the provincial prosecutors "for a complete preliminary investigation."

Petitioners moved for partial reconsideration of the Order, praying for the outright dismissal of the Palayan cases against them for lack of probable cause. The Motion was denied by Judge Turla in an Order.

ISSUE:

Whether or not respondent Judge Turla gravely abused her discretion when she remanded the Palayan cases to the Provincial Prosecutor for the conduct of preliminary investigation (YES)

RULING:

Rule 112, Section 5(a) of the Revised Rules of Criminal Procedure provides:

SEC. 5. When warrant of arrest may issue. -

(a) By the Regional Trial Court. -Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

A plain reading of the provision shows that upon filing of the information, the trial court judge has the following options: (1) dismiss the case if the evidence on record clearly fails to establish probable cause; (2) issue a warrant of arrest or a commitment order if findings show probable cause; or (3) order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.

The trial court judge's determination of probable cause is based on her or his personal evaluation of the prosecutor's resolution and its supporting evidence. The determination of probable cause by the trial court judge is a judicial function, whereas the determination of probable cause by the prosecutors is an executive function. This Court clarified this concept in *Napoles v. De Lima:*

During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.

On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that "no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]" This requirement of personal evaluation by the judge is reaffirmed in Rule 112, Section 5 (a) of the Rules on Criminal Procedure[.]

. . . .

Therefore, the determination of probable cause for filing an information in court and that for issuance of an arrest warrant are different. Once the information is filed in court, the trial court acquires jurisdiction and "any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court." (Citations omitted)

Thus, when Judge Turla held that the prosecutors' conduct of preliminary investigation was "incomplete" and that their determination of probable cause "has not measured up to [the] standard," she encroached upon the exclusive function of the prosecutors. Instead of determining probable cause, she ruled on the propriety of the preliminary investigation.

Regardless of Judge Turla's assessment on the conduct of the preliminary investigation, it was incumbent upon her to determine the existence of probable cause against the accused after a personal evaluation of the prosecutors' report and the supporting documents. She could even disregard the report if she found it unsatisfactory, and/or require the prosecutors to submit additional evidence. There was no option for her to remand the case back to the panel of prosecutors for another preliminary investigation. In doing so, she acted without any legal basis.

SHIRLEY C. RUIZ *v.* JUDGE ROLINDO D. BELDIA, JR.
A.M. NO. RTJ-02-1731, FEBRUARY 16, 2005, YNARES-SANTIAGO, *J.*

Whether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given to the prosecutor or fiscal or at least he must be asked for his recommendation because in fixing the amount of bail, the judge is required to take into account a number of factors such as the applicants character and reputation, forfeiture of other bonds or whether he is a fugitive from justice.

FACTS:

Shirley Ruiz filed a complaint for violation of Anti-fencing law against Santos before the DOJ. Pending the hearing of the preliminary investigation Judge Beldia apparently granted bail to Santos and approved the corresponding bail bond without serving notice to the prosecutor. Consequently, Ruiz filed the instant administrative complaint contending that respondent Judge Beldia had no authority to grant bail to Santos since the Investigating Prosecutor has yet to conclude the preliminary investigation. She claimed that for as long as the information has not yet been filed in court, a court has no power to grant bail to a detained person since it has not yet acquired jurisdiction over the person of the accused.

In defense, Judge Beldia maintained that Section 1 (c), Rule 114 of the Rules of Court allows any person in custody, even if not formally charged in court, to apply for bail.

ISSUE:

Whether Santos may be granted bail? **(YES)**

RULING:

Bail may be granted pending preliminary investigation. A person lawfully arrested and detained but who has not yet been formally charged in court, can seek his provisional release through the filing of an application for bail. He need not wait for a formal complaint or information to be filed since bail is available to all persons where the offense is bailable, Section 7, Rule 112 of the 1985 Rules of Criminal Procedure provides that a judge could grant bail to a person lawfully arrested but without a warrant, upon waiver of his right under Art. 125 of the RPC, as Santos had done upon her inquest.

Santos was entitled to bail as a matter of right since the offense with which she was charged does not carry the penalty of life imprisonment, *reclusion perpetua* or death. Notwithstanding, it was incumbent upon Judge Beldia to grant bail to Santos in accordance with established rules and procedure. Judge Beldia failed in this respect and must be held administratively liable. He disregarded basic procedural rules when he granted bail to Santos *sans* hearing and notice and

without the latter having filed a formal petition for bail. The prosecution was deprived of procedural due process.

CRISPIN B. BELTRAN *v.* PEOPLE OF THE PHILIPPINES, et al.
G.R. No. 175013, JUNE 1, 2007, CARPIO, *J.*

In an inquest proceeding, the inquest officer must determine if the arrest of the detained person was made in accordance with the provisions of paragraphs (a) and (b) of Section 5, Rule 113.

FACTS:

Beltran was arrested without a warrant and the arresting officers did not inform Beltran of the crime for which he was arrested. He was subjected to an inquest for Inciting to Sedition based on a speech Beltran allegedly gave during a rally, on the occasion of the 20th anniversary of the EDSA Revolution. The inquest was based on the joint affidavit of Beltran's arresting officers who claimed to have been present at the rally. The inquest prosecutor indicted Beltran and filed the corresponding information with the MTC.

In another incident, he authorities brought back Beltran to Camp Crame where he was subjected to a second inquest, this time for Rebellion, conducted by a panel of state prosecutors from the DOJ. The inquest was based on two letters referring to the DOJ for appropriate action implicating Beltran, the petitioners and several others as leaders and promoters of an alleged foiled plot to overthrow the Arroyo government.

ISSUE:

Whether the inquest proceeding against Beltran was valid? **(NO)**

RULING:

The joint affidavit of Beltran's arresting officers' states that the officers arrested Beltran, without a warrant, for Inciting to Sedition, and not for Rebellion. The inquest prosecutor could only have conducted an inquest for Inciting to Sedition and no other. When another group of prosecutors subjected Beltran to a second inquest proceeding for Rebellion, they overstepped their authority rendering that inquest void. None of Beltran's arresting officers saw Beltran commit, in their presence, the crime of Rebellion. Nor did they have personal knowledge of facts and circumstances that Beltran had just committed Rebellion, sufficient to form probable cause to believe that he had committed Rebellion. What these arresting officers alleged in their affidavit is that they saw and heard Beltran make an allegedly seditious speech on 24 February 2006.

If the arrest was not properly effected, the inquest officer should proceed under Section 9 of Circular No. 61 which provides:

> Should the Inquest Officer find that the arrest was not made in accordance with the Rules, he shall:
> a) recommend the release of the person arrested or detained;

b) note down the disposition on the referral document;
c) prepare a brief memorandum indicating the reasons for the action taken; and
d) forward the same, together with the record of the case, to the City or Provincial Prosecutor for appropriate action.

Where the recommendation for the release of the detained person is approved by the City or Provincial Prosecutor but the evidence on hand warrant the conduct of a regular preliminary investigation, the order of release shall be served on the officer having custody of said detainee and shall direct the said officer to serve upon the detainee the subpoena or notice of preliminary investigation, together with the copies of the charge sheet or complaint, affidavit or sworn statements of the complainant and his witnesses and other supporting evidence.
For the failure of Beltran's panel of inquest prosecutors to comply with Section 7, Rule 112 in relation to Section 5, Rule 113 and DOJ Circular No. 61, Beltran's inquest is void.

PEDRO E. BUDIONGAN, JR. *v*. HON. JACINTO M. DELA CRUZ, JR.
G.R. No. 170288, SEPTEMBER 22, 2006, YNARES-SANTIAGO, *J.*

The absence of a preliminary investigation does not impair the validity of the information nor render the same defective. Budiongan, et al. were not deprived of due process because they were afforded the opportunity to refute the charges by filing their counter-affidavits. The modification of the offense charged did not come as a surprise to the petitioners because it was based on the same set of facts and the same alleged illegal acts. Moreover, Budiongan failed to aver newly discovered evidence nor impute commission of grave errors or serious irregularities prejudicial to their interest to warrant a reconsideration or reinvestigation of the case as required under Section 8, Rule III of the Rules of Procedure of the Office of the Ombudsman.

FACTS:

Mayor Budiongan, et al. were initially charged for violation of Art. 220 of the RPC. Upon review, the charge was modified to violation of Section 3(e) of RA 3019. Finding that the Amended Information contains all the material averments necessary to make out a case for the first mode of violating Section 3(e) of RA 3019, the Sandiganbayan admitted the Amended Information in its Resolution. Budiongan filed with the Sandiganbayan a Motion for Leave of Court to File Motion for Reinvestigation arguing that the above Information's were filed without affording them the opportunity to file counter-affidavits to answer/rebut the modified charges. The Sandiganbayan issued a Resolution denying the motion. It held that it is too late in the day to remand the case for reinvestigation considering that Budiongan had already been arraigned and the case had long been set for pre-trial proceedings, with both parties having filed their respective briefs.

ISSUE:

Whether the absence of preliminary investigation/reinvestigation impairs the validity of the information? **(NO)**

RULING:

The right to a preliminary investigation is not a constitutional right, but is merely a right conferred by statute. The absence of a preliminary investigation does not affect the jurisdiction of the court over the case or constitute a ground for quashing the information. If absence of a preliminary

investigation does not render the information invalid nor affect the jurisdiction of the court over the case, then the denial of a motion for reinvestigation cannot likewise invalidate the information or oust the court of its jurisdiction over the case.

Budiongan, et al. were not deprived of due process because they were afforded the opportunity to refute the charges by filing their counter-affidavits. The modification of the offense charged did not come as a surprise to the petitioners because it was based on the same set of facts and the same alleged illegal acts. Moreover, Budiongan failed to aver newly discovered evidence nor impute commission of grave errors or serious irregularities prejudicial to their interest to warrant a reconsideration or reinvestigation of the case as required under Section 8, Rule III of the Rules of Procedure of the Office of the Ombudsman. Thus, the modification of the offense charged, even without affording the petitioners a new preliminary investigation, did not amount to a violation of their rights. Furthermore, the right to preliminary investigation is deemed waived when the accused fails to invoke it before or at the time of entering a plea at arraignment.

OFFICE OF THE COURT ADMINISTRATOR *v.* HON. ROSABELLA M. TORMIS
A.M. No. MTJ-12-1817, MARCH 12, 2013, *PER CURIAM*

Before a warrant of arrest may be issued the accused should first be notified of the charges against him and given the opportunity to file his counter-affidavits and other countervailing evidence.

FACTS:

The present administrative case refers to not just one but several acts allegedly committed by Judge Tormis said to be violative of the Rules of Court and Supreme Court rules, regulations and directives. One of which is the act of issuing a warrant of arrest without first apprising the accused of the charge against him in the Librando case. While admitting having issued the warrant of arrest, Judge Tormis supposedly did so only because the accused failed to appear during the arraignment despite notice.

ISSUE:

Whether the warrant of arrest is valid? **(NO)**

RULING:

Whenever a criminal case falls under the Summary Procedure, the general rule is that the court shall not order the arrest of the accused unless he fails to appear whenever required. Judge Tormis claimed that the issuance of the warrant of arrest against the accused in the Librando case was justified because of the accused's failure to appear during her arraignment despite notice. However, Judge Tormis' order requiring the accused to appear and submit her counter affidavit and those of her witnesses within ten days from receipt of the order was not yet served upon the accused when she issued the warrant. Judge Tormis issued the warrant of arrest in violation of the Rules on Summary Procedure.

ATTY. ERNESTO A. TABUJARA III and CHRISTINE S. DAYRIT *v.* PEOPLE OF THE PHILIPPINES and DAISY AFABLE
G.R. No. 175162, OCTOBER 29, 2008, CHICO-NAZARIO, *J.*

With respect to the issuance by inferior courts of warrants of arrest, it is necessary that the judge be satisfied that probable cause exists: 1) through an examination under oath and in writing of the complainant and his witnesses; which examination should be 2) in the form of searching questions and answers. This rule is not merely a procedural but a substantive rule because it gives flesh to two of the most sacrosanct guarantees found in the fundamental law: the guarantee against unreasonable searches and seizures and the due process requirement.

FACTS:

Criminal complaints for trespass to dwelling and grave coercion covered under summary procedure were filed against Atty. Tabujara III and Christine Dayrit. Probable cause was found and a warrant of arrest was issued based solely on the unsworn statement of Mauro De Lara who never appeared during preliminary investigation and who was not personally examined by the investigating judge.

ISSUE:

Whether the warrant of arrest is valid? **(NO)**

RULING:

It is constitutionally-mandated that a warrant of arrest shall issue only upon finding of probable cause personally determined by the judge after examination under oath or affirmation of the complainant and the witnesses he/she may produce, and particularly describing the person to be seized. Judge Adriatico gravely abused his discretion in issuing the assailed orders finding probable cause to hold petitioners Tabujara and Dayrit liable for trial and to issue warrants of arrest because it was based solely on the statement of witness Mauro De Lara whom Judge Adriatico did not personally examine in writing and under oath; neither did he propound searching questions. He merely stated in the assailed Order that he overlooked the said statement of De Lara; nevertheless, without conducting a personal examination on said witness or propounding searching questions, Judge Adriatico still found De Lara's allegations sufficient to establish probable cause.

When the investigating judge relied solely on the affidavit of witness De Lara which was not sworn to before him and whom he failed to examine in the form of searching questions and answers, he deprived petitioners of the opportunity to test the veracity of the allegations contained therein. Further, the issuance of warrants of arrest is not mandatory. The investigating judge must find that there is a necessity of placing the petitioners under immediate custody in order not to frustrate the ends of justice. Perusal of the records shows no necessity for the immediate issuance of warrants of arrest. Petitioners are not flight risks and have no prior criminal records.

PEOPLE OF THE PHILIPPINES, *Petitioner*, vs. JAN MICHAEL TAN and ARCHIE TAN, *Respondents*.
G.R. No. 182310, SECOND DIVISION, December 9, 2009, ABAD, *J.*

Probable cause assumes the existence of facts that would lead a reasonably discreet and prudent man to believe that a crime has been committed and that it was likely committed by the person sought to be arrested. It requires neither absolute certainty nor clear and convincing evidence of guilt. The test for

issuing a warrant of arrest is less stringent than that used for establishing the guilt of the accused. As long as the evidence shows a prima facie case against the accused, the trial court has sufficient ground to issue a warrant for his arrest.

Here, admittedly, the evidence against respondents Archie and Jan-Jan is merely circumstantial. What is important is that there is some rational basis for going ahead with judicial inquiry into the case. This Court does not subscribe to the CA's position that the prosecution had nothing to go on with.

FACTS:

Francisco "Bobby" Tan (Bobby), a businessman, lived with his family and a big household in a compound on M.H. del Pilar St., Molo, Iloilo City. His immediate family consisted of his wife, Cynthia Marie (Cindy), and their six children, namely, Raffy, Kristine, Katrina, Karen, Katherine, and Kathleen. Bobby's two older but illegitimate sons by another woman, respondents Archie and Jan Michael (Jan-Jan), also lived with him. Cindy treated them as her stepsons.

A few minutes later or at 12:17 a.m. on January 9, 2006, while security guard Lobreza was making his inspection rounds of the compound, he noticed that the lights were still on in the rooms of Cindy's stepsons, respondents Archie and Jan-Jan.

According to Archie and Jan-Jan, they climbed down the high concrete fence of the compound at about 12:45 a.m to go out, and that they returned home at around 3:30 a.m. Jan-Jan entered the house ahead of his brother. On reaching the door of his room at the end of the hallway, he noticed his stepsister Katherine, the second to the youngest, lying on the floor near the master's bedroom. As Jan-Jan switched on the light in his room, he beheld her lying on a pool of blood. He quickly stepped into the master's bedroom and there saw his father, Bobby, lying on the bed with his chest drenched in blood.

Archie who had come into the house after his brother Jan-Jan noticed that the door of his room, which he locked earlier, was partly open. As Archie went in and switched on the light, he saw his stepmother Cindy, lying in her blood near the wall below the air conditioner. He then heard Jan-Jan shouting to him that their father was dead. Archie immediately ran downstairs to call security guard Lobreza while his brother Jan-Jan went around and awakened the rest of the family. Because Lobreza did not respond to shouts, Archie ran to his room to rouse him up. He told him what he discovered then awakened the other house-helps.

Two days after the remains of the victims were brought home for the wake, Atty. Leonardo E. Jiz supposedly asked Archie and Jan-Jan, Cindy's stepsons, to sign a statement that the police prepared. The lawyer did not, however, let them read the document or explain to them its contents. Another two days later, police officers from the Regional CIDG submitted their investigation report to the City Prosecutor's Office of Iloilo City. This pointed to Archie and Jan-Jan as principal suspects in the brutal killing of their parents and a young stepsister. Police officer Eldy Bebit of the CIDG filed a complaint-affidavit with the City Prosecutor's Office, accusing the two brothers of parricide and double murder. The parties submitted their affidavits and pieces of evidence at the preliminary investigation.

City Prosecutor's Office filed separate informations for two murders and parricide against respondents Archie and Jan-Jan before the RTC of Iloilo City. Archie and Jan-Jan filed a motion for

judicial determination of probable cause with a prayer to suspend the issuance of warrants of arrest against them in the meantime. Further, they asked the RTC to defer further proceedings in order to give them the opportunity to question the public prosecutor's resolution in the case before the Secretary of Justice.

Acting presiding judge of the RTC issued an order, directing the prosecution to correct certain deficiencies in its evidence against respondents. Cindy's mother and court-appointed guardian ad litem of her minor grandchildren, opposed respondents Archie and Jan-Jan's petition for review before the DOJ. She pointed out that the two had sufficient motive to commit the crimes of which they were charged.

Archie and Jan-Jan's defense is alibi. They claimed that they were away when the crimes took place at the house. Based on Dr. Lebaquin's forensic computation, however, the victims probably died at about midnight, more or less. The two were still at home when the killings happened.

RTC, then temporarily presided over by Judge Narciso Aguilar, found no probable cause against respondents Archie and Jan-Jan. Judge Aguilar thus granted their motion to suspend the issuance of warrants for their arrest and to defer the proceedings. The two respondents then filed a motion to dismiss the case. RTC issued an order, directing the City Prosecutor's Office to submit additional evidence in the case but the latter office asked for more time to comply. Meanwhile, the DOJ issued a resolution dismissing respondents Archie and Jan-Jan's petition for review.
After a new presiding judge, Judge Globert Justalero, took over the RTC, he issued an order granting the prosecution's request for additional time within which to comply with the court's order. Prosecutor's office filed its compliance and submitted its amended resolution in the case. The petitioners assailed this amended resolution and pointed out that the public prosecutor did not submit any additional evidence.
Judge Justalero reversed the order of the previous presiding judge. He found probable cause against respondents Archie and Jan-Jan this time and ordered the issuance of warrants for their arrest. Without seeking reconsideration of Judge Justalero's order, Archie and Jan-Jan filed the present petition for certiorari with the CA of Cebu City. After hearing, the CA granted the petition, set aside the RTC order, and annulled the warrants of arrest that Judge Justalero issued. The CA also dismissed the criminal cases against the respondents. The public prosecutor filed a motion for reconsideration of the CA's decision through the Office of the Solicitor General but the latter court denied it, hence, this petition.

ISSUES:

(1) Whether or not probable cause existed against respondents Archie and Jan-Jan despite the absence of new evidence in the case; and **(YES)**

(2) Whether or not there is probable cause to issue a warrant for the arrest of the two. **(YES)**

RULING
Probable cause assumes the existence of facts that would lead a reasonably discreet and prudent man to believe that a crime has been committed and that it was likely committed by the person sought to be arrested. It requires neither absolute certainty nor clear and convincing evidence of guilt. The test for issuing a warrant of arrest is less stringent than that used for establishing the guilt of the accused. As long as the evidence shows a prima facie case against the accused, the trial court has sufficient ground to issue a warrant for his arrest.

(1) Actually, two new developments were before Judge Justalero: first, the DOJ's denial of the appeal of the two accused and its finding that probable cause existed against them and, two, the local prosecutor's submittal, if not of some new evidence, of additional arguments respecting the issue of probable cause. Grave abuse of discretion implies an irrational behavior. Surely, this cannot be said of Judge Justalero who re-examined in the light of the new developments what in the first place appeared to be an unsettled position taken by his predecessor.
(2) Here, admittedly, the evidence against respondents Archie and Jan-Jan is merely circumstantial. The prosecution evidence shows that they had motive in that they had been at odds with their father and stepmother. They had opportunity in that they were still probably home when the crime took place. Archie took two pairs of new gloves from his car late that evening. Cindy was apparently executed inside Archie's room. The separate rooms of the two accused had, quite curiously, been wiped clean even of their own fingerprints. A trial, unlike preliminary investigations, could yield more evidence favorable to either side after the interrogations of the witnesses either on direct examination or on cross-examination. What is important is that there is some rational basis for going ahead with judicial inquiry into the case. This Court does not subscribe to the CA's position that the prosecution had nothing to go on with.

HUBERT J. P. WEBB, *Petitioner,* vs. HONORABLE RAUL E. DE LEON, the Presiding Judge of the Regional Trial Court of Parañaque, Branch 258, HONORABLE ZOSIMO V. ESCANO, the Presiding Judge of the Regional Trial Court of Parañaque, Branch 259, PEOPLE OF THE PHILIPPINES, ZENON L. DE GUIA, JOVENCITO ZUÑO, LEONARDO GUIYAB, JR., ROBERTO LAO, PABLO FORMARAN, and NATIONAL BUREAU OF INVESTIGATION, and HONORABLE AMELITA G. TOLENTINO, the Presiding Judge of the Regional Trial Court of Parañaque, Branch 274, *Respondents*, LAURO VIZCONDE, *Intervenor*.
G.R. No. 121234, 121245, 121297, SECOND DIVISION, August 23, 1995, PUNO, *J.*

In the case at bar, the DOJ Panel submitted to the trial court its 26-page report, the two (2) sworn statements of Alfaro and the sworn statements of Carlos Cristobal and Lolita Birrer35 as well as the counter-affidavits of the petitioners. Apparently, the painstaking recital and analysis of the parties' evidence made in the DOJ Panel Report satisfied both judges that there is probable cause to issue warrants of arrest against petitioners. Again, it must be stressed that before issuing warrants of arrest, judges merely determine personally the probability, not the certainty of guilt of an accused. In doing so, judges do not conduct a de novo hearing to determine the existence of probable cause. They just personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence. The sufficiency of the review process cannot be measured by merely counting minutes and hours. The fact that it took the respondent judges a few hours to review and affirm the probable cause determination of the DOJ Panel does not mean they made no personal evaluation of the evidence attached to the records of the case.

FACTS:

NBI filed with the Department of Justice a letter-complaint charging Hubert Webb, Michael Gatchalian, Antonio J. Lejano and six (6) other persons, with the crime of Rape with Homicide. Forthwith, the Department of Justice formed a panel of prosecutors headed by Assistant Chief State Prosecutor Jovencio R. Zuño to conduct the preliminary investigation of those charged with the rape and killing on June 30, 1991 of Carmela N. Vizconde; her mother Estrellita Nicolas-Vizconde, and her sister Anne Marie Jennifer in their home at Number 80 W. Vinzons, St., BF Homes, Parañaque, Metro Manila.

During the preliminary investigation, the NBI presented the following: (1) the sworn statement dated May 22, 1995 of their principal witness, *Maria Jessica M. Alfaro* who allegedly saw the commission of the crime; (2) the sworn statements of two (2) of the former housemaids of the Webb family in the persons of *Nerissa E. Rosales* and *Mila S.Gaviola*; (3) the sworn-statement of *Carlos J. Cristobal* who alleged that on March 9, 1991 he was a passenger of United Airlines Flight No. 808 bound for New York and who expressed doubt on whether petitioner Webb was his co-passenger in the trip; (4) the sworn statement of *Lolita Birrer*, a former live-in partner of Gerardo Biong, who narrated the manner of how Biong investigated and tried to cover up the crime at bar; (5) the sworn statements of *Belen Dometita* and *Teofilo Minoza*, two of the Vizconde maids, and the sworn statements of *Normal White*, a security guard and *Manciano Gatmaitan*, an engineer. The *autopsy reports* of the victims were also submitted and they showed that Carmela had nine (9) stab wounds, Estrellita twelve (12) and Jennifer nineteen (19). The genital examination of Carmela confirmed the presence of spermatozoa.

Webb claimed during the preliminary investigation that he did not commit the crime at bar as he went to the United States on March 1, 1991 and returned to the Philippines on October 27, 1992, as corroborated by several witnesses. To further support his defense, he submitted documentary evidence that he bought a bicycle and a 1986 Toyota car while in the United States on said dates and that he was issued by the State of California Driver's License on June 14, 1991. Webb likewise submitted the letter dated July 25, 1995 of Mr. Robert Heafner, Legal Attache of the US Embassy, citing certain records tending to confirm, among others, his arrival at San Francisco, California on March 9, 1991 as a passenger in United Airlines Flight No. 808.

DOJ Panel issued a 26-page Resolution "finding probable cause to hold respondents for trial" and recommending that an Information for rape with homicide be filed against petitioners and their co-respondents. On the same date, it filed the corresponding Information against petitioners and their co-accused with the RTC of Parañaque. After the case was re-raffled, new warrants of arrest against the petitioners and their co-accused. Webb voluntarily surrendered to the police authorities at Camp Ricardo Papa Sr., in Bicutan, Taguig.

ISSUE:

Whether or not warrants of arrest can be issued even without the required preliminary investigation; **(YES)**

RULING:

Petitioners contend that Judge Raul de Leon and, later, respondent Judge Amelita Tolentino issued warrants of arrest against them without conducting the required preliminary examination. Petitioners support their stance by highlighting the following facts: (1) the issuance of warrants of arrest in a matter of few hours; (2) the failure of said judges to issue orders of arrest; (3) the records submitted to the trial court were incomplete and insufficient from which to base a finding of probable cause; and (4) that even Gerardo Biong who was included in the Information as a mere accessory had a "NO BAIL" recommendation by the DOJ Panel. Petitioners postulate that it was impossible to conduct a "searching examination of witnesses and evaluation of the documents" on the part of said judges.

The issuance of a warrant of arrest interferes with individual liberty and is regulated by no less than the fundamental law of the land. Section 2 of Article III of the Constitution provides:

> *Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized.*

The afore-quoted provision deals with the requirements of probable cause both with respect to issuance of warrants of arrest or search warrants. It is generally assumed that the same quantum of evidence is required whether one is concerned with probable cause to arrest or probable cause to search. But each requires a showing of probabilities as to somewhat different facts and circumstances, and thus one can exist without the other. In search cases, two conclusions must be supported by substantial evidence: that the items sought are in fact seizable by virtue of being connected with criminal activity, and that the items will be found in the place to be searched. It is not also necessary that a particular person be implicated. By comparison, in arrest cases there must be probable cause that a crime has been committed and that the person to be arrested committed it, which of course can exist without any showing that evidence of the crime will be found at premises under that person's control." Worthy to note, our Rules of Court do not provide for a similar procedure to be followed in the issuance of warrants of arrest and search warrants. With respect to warrants of arrest, section 6 of Rule 112 simply provides that "upon filing of an information, the Regional Trial Court may issue a warrant for the arrest of the accused." In contrast, the procedure to be followed in issuing search warrants is more defined.

Soliven v. Makasiar states that "What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusions as to the existence of probable cause."

Clearly then, the Constitution, the Rules of Court, and our case law repudiate the submission of petitioners that respondent judges should have conducted "searching examination of witnesses" before issuing warrants of arrest against them. They also reject petitioners' contention that a judge must first issue an order of arrest before issuing a warrant of arrest. There is no law or rule requiring the issuance of an Order of Arrest prior to a warrant of arrest.

In the case at bar, the DOJ Panel submitted to the trial court its 26-page report, the two (2) sworn statements of Alfaro and the sworn statements of Carlos Cristobal and Lolita Birrer35 as well as the counter-affidavits of the petitioners. Apparently, the painstaking recital and analysis of the parties' evidence made in the DOJ Panel Report satisfied both judges that there is probable cause to issue warrants of arrest against petitioners. Again, it must be stressed that before issuing warrants of arrest, judges merely determine personally the probability, not the certainty of guilt of an accused. In doing so, judges do not conduct a de novo hearing to determine the existence of probable cause. They just personally review the initial determination of the prosecutor finding a probable cause to see if it is supported by substantial evidence. The sufficiency of the review process cannot be measured by

merely counting minutes and hours. The fact that it took the respondent judges a few hours to review and affirm the probable cause determination of the DOJ Panel does not mean they made no personal evaluation of the evidence attached to the records of the case.

MAXIMO V. SOLIVEN, ANTONIO *vs*. ROCES, FREDERICK K. AGCAOILI, and GODOFREDO L. MANZANAS, *Petitioners*, v. THE HON. RAMON P. MAKASIAR, Presiding Judge of the Regional Trial Court of Manila, Branch 35, UNDERSECRETARY SILVESTRE BELLO III, of the Department of Justices, LUIS C. VICTOR, THE CITY FISCAL OF MANILA AND PRESIDENT CORAZON C. AQUINO, *Respondents*.
G.R. No. 82585, 82827, 83979, EN BANC, November 14, 1988, PER CURIAM

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

On June 30, 1987, the Supreme Court unanimously adopted Circular No. 12, setting down guidelines for the issuance of warrants of arrest. The procedure therein provided is reiterated and clarified in this resolution. It has not been shown that respondent judge has deviated from the prescribed procedure. Thus, with regard to the issuance of the warrants of arrest, a finding of grave abuse of discretion amounting to lack or excess of jurisdiction cannot be sustained.

FACTS:

Secretary of Justice denied petitioners' motion for reconsideration and upheld the resolution of the Undersecretary of Justice sustaining the City Fiscal's finding of a *prima facie* case against petitioners. A second motion for reconsideration filed by Beltran was denied by the Secretary of Justice. On appeal, the President, through the Executive Secretary, affirmed the resolution of the Secretary of Justice. The motion for reconsideration was denied by the Executive Secretary.

ISSUE:

Whether or not the constitutional rights of Beltran were violated when respondent RTC judge issued a warrant for his arrest without personally examining the complainant and the witnesses, if any, to determine probable cause? **(NO)**

RULING:

This calls for an interpretation of the constitutional provision on the issuance of warrants of arrest. The pertinent provision reads:

Art. III, Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally

by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The addition of the word "personally" after the word "determined" and the deletion of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law", has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the complainant and his witnesses determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.

On June 30, 1987, the Supreme Court unanimously adopted Circular No. 12, setting down guidelines for the issuance of warrants of arrest. The procedure therein provided is reiterated and clarified in this resolution. It has not been shown that respondent judge has deviated from the prescribed procedure. Thus, with regard to the issuance of the warrants of arrest, a finding of grave abuse of discretion amounting to lack or excess of jurisdiction cannot be sustained.

TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E. MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALES, JR., and BEN YU LIM, JR., *Petitioners,* vs. MAGDALENO M. PEÑA and HON. MANUEL Q. LIMSIACO, JR., as Judge Designate of the Municipal Trial Court in Cities, Bago City, *Respondents.*
G.R. No. 143591, SECOND DIVISION, May 5, 2010, PEREZ, *J.*

An arrest without a probable cause is an unreasonable seizure of a person, and violates the privacy of persons which ought not to be intruded by the State.

Measured against the constitutional mandate and established rulings, there was here a clear abdication of the judicial function and a clear indication that the judge blindly followed the certification of a city prosecutor as to the existence of probable cause for the issuance of a warrant of arrest with respect to all of the petitioners. The careless inclusion of Mr. Ben Lim, Jr., in the warrant of arrest gives flesh to the bone of contention of petitioners that the instant case is a matter of persecution rather than prosecution. On this ground, this Court may enjoin the criminal cases against petitioners.

FACTS:

Atty. Peña instituted a civil case for recovery of agent's compensation and expenses, damages, and attorney's fees against Urban Bank and herein petitioners, before the RTC of Negros Occidental, Bago

City. Atty. Peña anchored his claim for compensation on the Contract of Agency allegedly entered into with the petitioners, wherein the former undertook to perform such acts necessary to prevent any intruder and squatter from unlawfully occupying Urban Bank's property located along Roxas Boulevard, Pasay City.

Petitioners filed a Motion to Dismiss arguing that they never appointed the respondent as agent or counsel. Attached to the motion were several documents in an attempt to show that the respondent was appointed as agent by ISCI and not by Urban Bank or by the petitioners.

In view of the introduction of the documents, Atty. Peña filed his Complaint-Affidavit with the Office of the City Prosecutor, Bago City. He claimed that said documents were falsified because the alleged signatories did not actually affix their signatures, and the signatories were neither stockholders nor officers and employees of ISCI. Worse, petitioners introduced said documents as evidence before the RTC knowing that they were falsified.

In a Resolution, City Prosecutor found probable cause for the indictment of petitioners for four (4) counts of the crime of Introducing Falsified Documents, penalized by the second paragraph of Article 172 of the Revised Penal Code.

Petitioners filed an Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation. Petitioners insisted that they were denied due process because of the non-observance of the proper procedure on preliminary investigation prescribed in the Rules of Court. Specifically, they claimed that they were not afforded the right to submit their counter-affidavit. Then they argued that since no such counter-affidavit and supporting documents were submitted by the petitioners, the trial judge merely relied on the complaint-affidavit and attachments of the respondent in issuing the warrants of arrest, also in contravention with the Rules of Court. Petitioners further prayed that the information be quashed for lack of probable cause.

MTCC denied the omnibus motion primarily on the ground that preliminary investigation was not available in the instant case – which fell within the jurisdiction of the first-level court. The court, likewise, upheld the validity of the warrant of arrest, saying that it was issued in accordance with the Rules of Court.

Petitioners immediately instituted a special civil action for Certiorari and Prohibition with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order (TRO) before the CA which dismissed the petition. Thus, petitioners filed the instant petition for review on certiorari under Rule 45 of the Rules of Court.

ISSUE:

Whether or not the issuance of the warrant of arrest was valid? **(NO)**

RULING:

In the issuance of a warrant of arrest, the mandate of the Constitution is for the judge to personally determine the existence of probable cause. Section 2, Article III of the Constitution provides:

> *Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable,*

> *and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.*

Corollary thereto, Section 9(b) of the 1985 Rules of Criminal Procedure provides:

> *Sec. 9. Cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure.*
> *(b) Where filed directly with the Municipal Trial Court. — If the complaint or information is filed directly with the Municipal Trial Court, the procedure provided for in Section 3(a) of this Rule shall likewise be observed. If the judge finds no sufficient ground to hold the respondent for trial, he shall dismiss the complaint or information. Otherwise, he shall issue a warrant of arrest after personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers.*

Enshrined in our Constitution is the rule that "[n]o x x x warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing x x x the persons x x x to be seized." Interpreting the words "personal determination," we said in Soliven v. Makasiar that it does not thereby mean that judges are obliged to conduct the personal examination of the complainant and his witnesses themselves. To require thus would be to unduly laden them with preliminary examinations and investigations of criminal complaints instead of concentrating on hearing and deciding cases filed before them. Rather, what is emphasized merely is the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause. To this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence. What he is never allowed to do is to follow blindly the prosecutor's bare certification as to the existence of probable cause. Much more is required by the constitutional provision. Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he cannot just rely on the bare certification alone but must go beyond it. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it. He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant.

An arrest without a probable cause is an unreasonable seizure of a person, and violates the privacy of persons which ought not to be intruded by the State.

Measured against the constitutional mandate and established rulings, there was here a clear abdication of the judicial function and a clear indication that the judge blindly followed the certification of a city prosecutor as to the existence of probable cause for the issuance of a warrant of arrest with respect to all of the petitioners. The careless inclusion of Mr. Ben Lim, Jr., in the warrant of arrest gives flesh to the bone of contention of petitioners that the instant case is a matter of persecution rather than prosecution. On this ground, this Court may enjoin the criminal cases against petitioners.

VIRGINIA DE LOS SANTOS-DIO, as authorized representative of H.S. EQUITIES, LTD., and WEST DALE ASSETS, LTD. *v.* THE HONORABLE COURT OF APPEALS, et al.
G.R. No. 178947, JUNE 26, 2013, PERLAS-BERNABE, *J.*

A judge's discretion to dismiss a case immediately after the filing of the information in court is appropriate only when the failure to establish probable cause can be clearly inferred from the evidence presented and not when its existence is simply doubtful.

FACTS:

After Virginia Dio was ousted as Director and Treasurer of Subic Bay Marine Exploratorium, Inc., she filed two criminal complaints for estafa against Timothy Desmond. The City Prosecutor found probable cause. When the same was questioned, the RTC ruled in favor of Desmond and declared that no probable cause exists for the crimes charged against him. The RTC denied the issuance of a warrant of arrest and hold-departure order against Desmond and ordered the dismissal of the cases against him. This was affirmed by the CA. Hence, the petition.

ISSUE:

Whether there is probable cause for the issuance of warrant of arrest? (YES)

RULING:

A judge is not bound by the resolution of the public prosecutor who conducted the preliminary investigation and must himself ascertain from the latter's findings and supporting documents whether probable cause exists for the purpose of issuing a warrant of arrest. While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause.

The RTC's immediate dismissal, as affirmed by the CA, was improper as the standard of clear lack of probable cause was not observed. Certain essential facts – namely, (*a*) whether Desmond committed false representations that induced Dio to invest in Ocean Adventure; and (*b*) whether Desmond utilized the funds invested by Dio solely for the Miracle Beach Project for purposes different from what was agreed upon –remain controverted. It cannot be said that the absence of the elements of the crime of estafa under Article 315(2)(a) and 315(1)(b) of the RPC had already been established.

PEOPLE *v*. NG YIK BUN, et al.
G.R. No. 180452, January 10, 2011, VELASCO, JR., *J.*

When a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene, he may effect an arrest without a warrant on the basis of Sec. 5(a), Rule 113 of the Rules of Court, as the offense is deemed committed in his presence or within his view.

FACTS:

Upon the receipt of an information that there was an ongoing shipment of contraband, the police officers formed a team, who then later on proceeded to Villa Vicenta Resort in *Barangay* Bignay II, Sariaya. The members of the team were able to observe the goings-on at the resort from a distance of around 50 meters. They spotted six Chinese-looking men loading bags containing a white substance into a white van. Having been noticed, Capt. Ibon identified his team and asked Chua Shilou Hwan what they were loading on the van. Hwan replied that it was *shabu* and pointed to accused-appellant Raymond Tan as the leader.

ISSUE:

Whether there was a valid warrantless arrest? (YES)

RULING:

There was a valid warrantless arrest *in flagrante delicto* considering the circumstances immediately prior to and surrounding the arrest of Ng Yik Bun, et. al: (1) the police officers received information from an operative about an ongoing shipment of contraband; (2) the police officers, with the operative, proceeded to Villa Vicenta Resort in *Barangay* Bignay II, Sariaya, Quezon; (3) they observed the goings-on at the resort from a distance of around 50 meters; and (4) they spotted Ng Yik Bun, et. al loading transparent bags containing a white substance into a white L-300 van. The arresting police officers had probable cause to suspect that they were loading and transporting contraband, more so when Hwan, upon being accosted, readily mentioned that they were loading *shabu* and pointed to Tan as their leader.

Ng Yik Bun, et al. were committing the offense of possessing *shabu* and loading them in a white van when the police officers arrested them. The crime was committed in the presence of the police officers with the contraband, inside transparent plastic containers, in plain view of the arresting officers.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- JACK RACHO Y RAQUERO, *Appellant*.
G.R. No. 186529, SECOND DIVISION, August 3, 2010, NACHURA, *J*.

Reliable information alone is not sufficient to justify a warrantless arrest. The rule requires, in addition, that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense.

In the present case, Racho was not committing a crime in the presence of the police officers. Neither did the arresting officers have personal knowledge of facts indicating that the person to be arrested had committed, was committing, or about to commit an offense. At the time of the arrest, Racho had just alighted from the bus and was waiting for a tricycle. Appellant was not acting in any suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Were it not for the information given by the informant, Racho would not have been apprehended and no search would have been made, and the sachet of shabu would not have been confiscated.

FACTS:

A confidential agent of the police transacted with Jack Racho for the purchase of *shabu.* A buy-bust operation was formulated by the police officers to arrest Racho. When appellant alighted from the bus, the confidential agent pointed to him as the person he transacted with earlier. As Racho was about to board a tricycle, the team approached him and invited him to the police station on suspicion of carrying *shabu*. Racho immediately denied the accusation, but as he pulled out his hands from his pants pocket, a white envelope slipped therefrom which, when opened, yielded a small sachet containing the suspected drug.

ISSUE:

Whether the warrantless arrest of Racho was lawful. (NO)

RULING:

The long standing rule in this jurisdiction is that "reliable information" alone is not sufficient to justify a warrantless arrest. The rule requires, in addition, that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense. We find no cogent reason to depart from this well-established doctrine.

The instant case is similar to *People v. Aruta, People v. Tudtud*, and *People v. Nuevas*

In *People v. Aruta*, a police officer was tipped off by his informant that a certain "Aling Rosa" would be arriving from Baguio City the following day with a large volume of marijuana. Acting on said tip, the police assembled a team and deployed themselves near the Philippine National Bank (PNB) in Olongapo City. While thus positioned, a Victory Liner Bus stopped in front of the PNB building where two females and a man got off. The informant then pointed to the team members the woman, "Aling Rosa," who was then carrying a traveling bag. Thereafter, the team approached her and introduced themselves. When asked about the contents of her bag, she handed it to the apprehending officers. Upon inspection, the bag was found to contain dried marijuana leaves.

In the present case, Racho was not committing a crime in the presence of the police officers. Neither did the arresting officers have personal knowledge of facts indicating that the person to be arrested had committed, was committing, or about to commit an offense. At the time of the arrest, Racho had just alighted from the bus and was waiting for a tricycle. Appellant was not acting in any suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Were it not for the information given by the informant, Racho would not have been apprehended and no search would have been made, and the sachet of *shabu* would not have been confiscated.

Neither were the arresting officers impelled by any urgency that would allow them to do away with the requisite warrant. Their office received the tipped information on May 19, 2003. They likewise learned from the informant not only the Racho's physical description but also his name. Although it was not certain that appellant would arrive on the same day (May 19), there was an assurance that he would be there the following day (May 20). Clearly, the police had ample opportunity to apply for a warrant.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RICARDO ALUNDAY, *Accused-Appellant.*
G.R. No. 181546, THIRD DIVISION, September 3, 2008, CHICO-NAZARIO, *J.*

When a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant on the basis of Section 5, par. (a), Rule 113 of the Rules of Court as the offense is deemed committed in his presence or within his view. In essence, Section 5, par. (a), Rule 113, requires that the accused be caught in flagrante delicto or caught in the act of committing a crime.

In this case, it must be recalled that the Intelligence Section of the Provincial Office of the Mountain Province received the information sometime in May 2000, and accused-appellant was arrested by SPO1 Saipen during the police raid at the plantation at Mount Churyon, Sadanga, only on 3 August 2000. This is so because the arrest was effected only after a series of validations conducted by the team to verify or confirm the report that indeed a marijuana plantation existed at the area and after an operation plan was formed. As admitted by the accused in his supplemental brief, the information about the existing marijuana plantation was ***finally confirmed only on 2 August 2000*** *On 3 August 2000, the arresting team of SPO1 Saipen proceeded to the marijuana plantation. SPO1 Saipen saw accused-appellant personally cutting and gathering marijuana plants. Thus, accused-appellant's arrest on 3 August 2000 was legal, because he was caught in flagrante delicto; that is, the persons arrested were committing a crime in the presence of the arresting officers.*

FACTS:

Police officers received a report from a confidential informant of an existing marijuana plantation within the vicinity of Mount Churyon, Sadanga, Mountain Province. The same was later on confirmed and validated. A joint operation (Operation Banana) by the whole Mountain Province Police Force was formed. Upon reaching the place, at a distance of 30 meters, SPO1 Saipen, together with the members of his group, saw Ricardo Alunday cutting and gathering marijuana plants. Alunday was arrested.

ISSUE:

Whether the warrantless arrest of Alunday was lawful. (YES)

RULING:

In *People v. Sucro* the Court held that when a police officer sees the offense, although at a distance, or hears the disturbances created thereby, and proceeds at once to the scene thereof, he may effect an arrest without a warrant on the basis of Section 5, par. (a), Rule 113 of the Rules of Court as the offense is deemed committed in his presence or within his view. In essence, Section 5, par. (a), Rule 113, requires that the accused be caught *in flagrante delicto* or caught in the act of committing a crime.

Section 5(a), Rule 113 provides that a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit, an offense. Section 5(a) refers to arrest *in flagrante delicto*. *In flagrante delicto* means caught in the act of committing a crime. This rule, which warrants the arrest of a person without warrant, requires that the person arrested has just committed a crime, or is committing it, or is about to commit an offense, in the presence or within view of the arresting officer.

It must be recalled that the Intelligence Section of the Provincial Office of the Mountain Province

received the information sometime in May 2000, and accused-appellant was arrested by SPO1 Saipen during the police raid at the plantation at Mount Churyon, Sadanga, only on 3 August 2000. This is so because the arrest was effected only after a series of validations conducted by the team to verify or confirm the report that indeed a marijuana plantation existed at the area and after an operation plan was formed. As admitted by the accused in his supplemental brief, the information about the existing marijuana plantation was **finally confirmed only on 2 August 2000** On 3 August 2000, the arresting team of SPO1 Saipen proceeded to the marijuana plantation. SPO1 Saipen saw accused-appellant personally cutting and gathering marijuana plants. Thus, accused-appellant's arrest on 3 August 2000 was legal, because he was caught *in flagrante delicto;* that is, the persons arrested were committing a crime in the presence of the arresting officers.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- IDEL AMINNUDIN y AHNI, *Defendant-Appellant.*
G.R. No. 74869, FIRST DIVISION, July 6, 1988, CRUZ, *J.*

A valid warrantless arrest requires that the accused, at the moment of his arrest, was committing a crime, was about to do so, or had just done so.

In this case, there was no warrant of arrest or search warrant issued by a judge after personal determination by him of the existence of probable cause. Contrary to the averments of the government, Aminnudin was not caught in flagrante nor was a crime about to be committed or had just been committed to justify the warrantless arrest allowed under Rule 113 of the Rules of Court. Aminnudin was merely descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. He was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension.

FACTS:

Idel Aminnudin was arrested shortly after disembarking from the M/V Wilcon 9 in Iloilo City. The PC officers who were waiting for him simply accosted him, inspected his bag and finding what looked like marijuana leaves, took him to their headquarters for investigation. They detained him and inspected the bag he was carrying, which was later on found to contain three kilos of marijuana leaves. Aminnudin alleged that he was arbitrarily arrested and his bag was confiscated without a search warrant.

ISSUE:

Whether Aminnudin was lawfully arrested. (NO)

RULING:

The mandate of the Bill of Rights is clear:

> Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the

complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In the case at bar, there was no warrant of arrest or search warrant issued by a judge after personal determination by him of the existence of probable cause. Contrary to the averments of the government, the accused-appellant was not caught *in flagrante* nor was a crime about to be committed or had just been committed to justify the warrantless arrest allowed under Rule 113 of the Rules of Court. Even expediency could not be invoked to dispense with the obtention of the warrant as in the case of Roldan v. Arca, for example. Here it was held that vessels and aircraft are subject to warrantless searches and seizures for violation of the customs law because these vehicles may be quickly moved out of the locality or jurisdiction before the warrant can be secured.

The present case presented no such urgency. From the conflicting declarations of the PC witnesses, it is clear that they had at least two days within which they could have obtained a warrant to arrest and search Aminnudin who was coming to Iloilo on the M/V Wilcon 9. His name was known. The vehicle was Identified. The date of its arrival was certain. And from the information they had received, they could have persuaded a judge that there was probable cause, indeed, to justify the issuance of a warrant. Yet they did nothing. No effort was made to comply with the law. The Bill of Rights was ignored altogether because the PC lieutenant who was the head of the arresting team, had determined on his own authority that a "search warrant was not necessary."

In the case at bar, the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension. It was the furtive finger that triggered his arrest. The Identification by the informer was the probable cause as determined by the officers (and not a judge) that authorized them to pounce upon Aminnudin and immediately arrest him.

Without the evidence of the marijuana allegedly seized from Aminnudin, the case of the prosecution must fall. That evidence cannot be admitted, and should never have been considered by the trial court for the simple fact is that the marijuana was seized illegally. It is the fruit of the poisonous tree, to use Justice Holmes' felicitous phrase. The search was not an incident of a lawful arrest because there was no warrant of arrest and the warrantless arrest did not come under the exceptions allowed by the Rules of Court. Hence, the warrantless search was also illegal and the evidence obtained thereby was inadmissible.

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*,-versus- ROGELIO MENGOTE y TEJAS, *Accused-Appellant*.
G.R. No. 87059, FIRST DIVISION, June 22, 1992, CRUZ, *J.*

The officer arresting a person who has just committed, is committing, or is about to commit an offense must have personal knowledge of the fact. The offense must also be committed in his presence or within his view. It is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. A crime must in fact have been committed first.

In this case, the prosecution has not shown that at the time of Mengote's arrest an offense had in fact just been committed and that the arresting officers had personal knowledge of facts indicating that Mengote had committed it. All they had was hearsay information from the telephone caller, and about a crime that had yet to be committed. They did not know then what offense, if at all, had been committed and neither were they aware of the participation therein of the accused-appellant. It was only later, after Danganan had appeared at the Police headquarters, that they learned of the robbery in his house and of Mengote's supposed involvement therein.

FACTS:

The Western Police District received a telephone call from an informer that there were three suspicious-looking persons. A surveillance team was dispatched to the place. They saw two men "looking from side to side," one of whom was holding his abdomen. They approached these persons and identified themselves as policemen. The two tried to run away but were unable to escape. The suspects were searched. Accused Mengote was found with a revolver with six live bullets in the chamber. Morellos had a fan knife secreted in his pants pocket. The weapons were taken from them. Mengote and Morellos were turned over to police headquarters for investigation. Witness Danganan identified the weapon as among the articles stolen from him during the robbery in his house. He pointed to Mengote as one of the robbers.

ISSUE:

Whether the arrest and search of Mengote and the seizure of the revolver from him were lawful. (NO)

RULING:

In the landmark case of *People v. Burgos*, this Court declared:

> Under Section 6(a) of Rule 113, the officer arresting a person who has just committed, is committing, or is about to commit an offense must have *personal knowledge* of the fact. *The offense must also be committed in his presence or within his view.* (Sayo v. Chief of Police, 80 Phil. 859).
>
> xxx xxx xxx
>
> In arrests without a warrant under Section 6(b), however, it is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. *A crime must in fact or actually have been committed first. That a crime has actually been committed is an essential precondition. It is not enough to suspect that a crime may have been committed. The fact of the commission of the offense must be undisputed.* The test of reasonable ground applies only to the identity of the perpetrator. (Emphasis supplied)

These requirements have not been established in the case at bar. At the time of the arrest in question, the accused-appellant was merely "looking from side to side" and "holding his abdomen," according to the arresting officers themselves. There was apparently no offense that had just been committed or was being actually committed or at least being attempted by Mengote in their presence.

The Solicitor General submits that the actual existence of an offense was not necessary as long as Mengote's acts "created a reasonable suspicion on the part of the arresting officers and induced in them the belief that an offense had been committed and that the accused-appellant had committed it." The question is, What offense? What offense could possibly have been suggested by a person "looking from side to side" and "holding his abdomen" and in a place not exactly forsaken?

These are certainly not sinister acts. And the setting of the arrest made them less so, if at all. It might have been different if Mengote bad been apprehended at an ungodly hour and in a place where he had no reason to be, like a darkened alley at 3 o'clock in the morning. But he was arrested at 11:30 in the morning and in a crowded street shortly after alighting from a passenger jeep with I his companion. He was not skulking in the shadows but walking in the clear light of day. There was nothing clandestine about his being on that street at that busy hour in the blaze of the noonday sun.

On the other hand, there could have been a number of reasons, all of them innocent, why his eyes were darting from side to side and be was holding his abdomen. If they excited suspicion in the minds of the arresting officers, as the prosecution suggests, it has nevertheless not been shown what their suspicion was all about. In fact, the policemen themselves testified that they were dispatched to that place only because of the telephone call from the informer that there were "suspicious-looking" persons in that vicinity who were about to commit a robbery at North Bay Boulevard. The caller did not explain why he thought the men looked suspicious nor did he elaborate on the impending crime.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- GERMAN AGOJO Y LUNA, *Appellant.*
G.R. No. 181318, SECOND DIVISION, April 16, 2009, TINGA, *J.*

The second instance of lawful warrantless arrest covered by paragraph (b) cited above necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it. A review of the records shows that both requirements were met in this case.

In this case, from the spot where the buy-bust team was, they definitely witnessed the sale of shabu took place. So, too, there was a large measure of immediacy between the time of commission of the offense and the time of the arrest. After Alonzo had signaled the buy-bust team when he received the VHS tape from appellant, Ablang approached Alonzo and immediately examined the tape. Soon thereafter, he executed the ruse to make appellant to go down, as the latter had in the meantime gone up. The ruse succeeded when appellant went down, and he was arrested right then and there.

FACTS:

A civilian informant reported the drug trading activities of German Agojo to Police Chief Inspector Ablang. Alonzo narrated that appellant agreed to sell him 200 grams of *shabu* for ₱70,000.00 on a 50% cash and 50% credit basis. The sale was to take place in front of the Mercado Hospital in Tanauan, Batangas. After the conduct of the buy-bust operation, the team was able to seize *shabu* and arrest Agojo.

ISSUE:

Whether there was a valid warrantless arrest. (YES)

RULING:

In almost every case involving a buy-bust operation, the accused puts up the defense of frame-up. The Court has repeatedly emphasized that the defense of "frame-up" is viewed with disfavor since the defense is easily concocted and is a common ploy of the accused. Therefore, clear and convincing evidence of the frame-up must be shown for such a defense to be given merit.

In this case, appellant points to the arrest not being in *flagrante delicto*, the existence of discrepancies in the serial numbers of the buy-bust money and a prior attempt to frame him up as proofs of the frame-up. However, the fact that the arrest was not in *flagrante delicto* is of no consequence. The arrest was validly executed pursuant to Section 5, paragraph (b) of Rule 113 of the Rules of Court, which states:

Sec. 5. *Arrest without warrant; when lawful*. — A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; **(b) When an offense has in fact been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; and,** (c) When the person to be arrested is a prisoner who has escaped from penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (Emphasis supplied)

The second instance of lawful warrantless arrest covered by paragraph (b) cited above necessitates two stringent requirements before a warrantless arrest can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it. A review of the records shows that both requirements were met in this case.

From the spot where the buy-bust team was, they definitely witnessed the sale of *shabu* took place. So, too, there was a large measure of immediacy between the time of commission of the offense and the time of the arrest. After Alonzo had signaled the buy-bust team when he received the VHS tape from appellant, Ablang approached Alonzo and immediately examined the tape. Soon thereafter, he executed the ruse to make appellant to go down, as the latter had in the meantime gone up. The ruse succeeded when appellant went down, and he was arrested right then and there.

JUDGE FELIMON ABELITA III, *Petitioner*, -versus-P/SUPT. GERMAN B. DORIA AND SPO3 CESAR RAMIREZ, *Respondents.*
G.R. No. 170672, FIRST DIVISION, August 14, 2009, CARPIO, *J.*

Section 5, Rule 113 of the 1985 Rules on Criminal Procedure does not require the arresting officers to personally witness the commission of the offense with their own eyes.

In this case, P/Supt. Doria received a report about the alleged shooting incident. SPO3 Ramirez investigated the report and learned from witnesses that petitioner was involved in the incident. They were able to track down petitioner, but when invited to the police headquarters to shed light on the incident, petitioner initially agreed then sped up his vehicle, prompting the police authorities to give chase. Petitioner's act of trying to get away, coupled with the incident report, is enough to raise a reasonable suspicion as to the existence of probable cause.

FACTS:

Judge Felimon Abelita alleged that his arrest and the search were unlawful under Section 5, Rule 113 of the 1985 Rules on Criminal Procedure. He alleged that for the warrantless arrest to be lawful, the arresting officer must have personal knowledge of facts that the person to be arrested has committed, is actually committing, or is attempting to commit an offense and that the alleged shooting incident was just relayed to the arresting officers, and thus they have no personal knowledge of facts as required by the Rules.

ISSUE:

Whether there was a valid warrantless arrest.(YES)

RULING:

For the warrantless arrest under this Rule to be valid, two requisites must concur: (1) the offender has just committed an offense; and (2) the arresting peace officer or private person has personal knowledge of facts indicating that the person to be arrested has committed it.

Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion, therefore, must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

P/Supt. Doria received a report about the alleged shooting incident. SPO3 Ramirez investigated the report and learned from witnesses that petitioner was involved in the incident. They were able to track down petitioner, but when invited to the police headquarters to shed light on the incident, petitioner initially agreed then sped up his vehicle, prompting the police authorities to give chase. Petitioner's act of trying to get away, coupled with the incident report, is enough to raise a reasonable suspicion as to the existence of probable cause.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- JOSE RAYRAY Y AREOLA, *Accused-Appellant.*
G.R. No. 90628, FIRST DIVISION, February 1, 1995, BELLOSILLO, *J.*

A citizen may make a warrantless arrest when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

In this case, although officially assigned in Baguio City, Lt. Ancheta's act of arresting accused-appellant (after the latter offered to sell him marijuana in San Fernando, La Union) is justified not only by his duty as a law enforcer but also by Sec. 5 of Rule 113, which authorizes instances of warrantless or citizens' arrests.

FACTS:

Rayray was arrested, tried and subsequently convicted of violation of Sec. 4, Art. II of R. A. No. 6425 after offering to sell marijuana to a stranger, who turned out to be the Chief Administrative Officer of the Regional Integrated National Police (INP) Command stationed in Baguio City. Accused-appellant denied making the offer to sell and argued that his arrest was illegal because P/Lt. Ancheta had no authority to arrest persons in San Fernando, La Union, being then assigned at the Regional INP Command in Baguio City.

ISSUE:

Whether P/Lt. Ancheta had authority to arrest Rayray. (YES)

RULING:

The Court cannot yield to appellant's view that just because Lt. Ancheta was assigned in Baguio City he could not arrest persons caught in the act of committing a crime in some other place, especially so where he was the intended victim. A policeman cannot callously set aside his essential duty of apprehending criminal offenders and of keeping peace and order on the shallow excuse that he is not in his place of assignment. His responsibility to protect the public by apprehending violators of the law, especially one caught *in flagrante delicto* is not limited by territorial constraints. It follows him wherever he goes. Moreover, Sec. 5, par. (a), Rule 113, of the Revised Rules on Criminal Procedure authorities a warrantless arrest, otherwise called a citizen's arrest, "*when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense*." Thus, although officially assigned in Baguio City, Lt. Ancheta's act of arresting accused-appellant (after the latter offered to sell him marijuana in San Fernando, La Union) is justified not only by his duty as a law enforcer but also by Sec. 5 of Rule 113, which authorizes instances of warrantless or citizens' arrests.

PEOPLE OF THE PHILIPPINES, *Plaintiff -Appellee*, -versus- ROBERTO VELASCO, *Accused-Appellant.*
G.R. No. 190318, FIRST DIVISION, November 27, 2013, LEONARDO-DE CASTRO, J.

An accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment. In this case, Velasco raised for the first time on appeal the legality of his arrest.

FACTS:

Velasco was arraigned for the two charges of rape and one charge of acts of lasciviousness to which he entered a plea of not guilty on all charges. He was later arraigned for the third charge of rape to which he likewise pleaded "not guilty." The RTC found appellant Roberto Velasco guilty beyond reasonable doubt of the crime of three counts of rape under Article 266-A of the RPC. Velasco elevated the case to the CA which denied his appeal and affirmed with modification the trial court judgment. Velasco then for the first time raised the legality of his arrest.

ISSUE:

Whether the accused is estopped from assailing any irregularity of his arrest. (YES)

RULING:

Jurisprudence tells us that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment, thus, any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction of the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.

Nevertheless, even if appellant's warrantless arrest were proven to be indeed invalid, such a scenario would still not provide salvation to appellant's cause because jurisprudence also instructs us that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.

In this case, Velasco raised for the first time on appeal the legality of his arrest.

RODRIGO RONTOS Y DELA TORRE, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 188024, FIRST DIVISION, June 5, 2013, SERENO, *C. J.*

"It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before his arraignment."

In this case, in his arraignment before the trial court, petitioner never raised any issue and instead "freely and voluntarily pleaded Not Guilty to the offense charged."

FACTS:

A Complaint for violation of Section 11 (possession of dangerous drugs), Article II of R.A. 9165, was filed against Rontos. The RTC rendered a decision finding accused guilty beyond reasonable doubt. On appeal to the CA, petitioner contended that since his warrantless arrest was illegal, the confiscated items were inadmissible in evidence. The CA ruled that the question over the legality of the arrest was deemed waived by petitioner when he voluntarily submitted himself to the jurisdiction of the court by entering a plea of "not guilty" and participating in the trial of the case.

ISSUE:

Whether the question as to the legality of the arrest is deemed waived by petitioner. (YES)

RULING:

Rontos' failure to question the legality of his arrest before entering his plea during arraignment operated as a waiver of that defense. "It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before his arraignment."

In his arraignment before the trial court, petitioner never raised any issue and instead "freely and voluntarily pleaded Not Guilty to the offense charged." Thus, he was estopped from raising the issue of the legality of his arrest before the trial court, more so on appeal before the CA or this Court.

UNITED LABORATORIES, INC., *Petitioner*, -versus- ERNESTO ISIP and/or SHALIMAR PHILIPPINES and/or OCCUPANTS, Shalimar Building, No. 1571, Aragon Street, Sta. Cruz, Manila, *Respondents*.
G.R. No. 163858, SECOND DIVISION, June 28, 2005, CALLEJO, SR., *J.*

A search warrant, to be valid, must particularly describe the place to be searched and the things to be seized. The officers of the law are to seize only those things particularly described in the search warrant. A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to a crime. The search is limited in scope so as not to be general or explanatory. Nothing is left to the discretion of the officer executing the warrant.

In this case, Disudrin and/or Inoflox were not listed in the search warrant issued by the court a quo as among the properties to be seized by the NBI agents. The warrant specifically authorized the officers only to seize "counterfeit Revicon multivitamins, finished or unfinished, and the documents used in recording, manufacture and/or importation, distribution and/or sale, or the offering for sale, sale and/or distribution of the said vitamins." The implementing officers failed to find any counterfeit Revicon multivitamins, and instead seized sealed boxes which, when opened at the place where they were found, turned out to contain Inoflox and Disudrin.

FACTS:

Armadillo Protective and Security Agency placed an asset named Charlie Rabe (Rabe) who was renting a room in Shalimar Building located in Sta. Cruz, Manila. According to Rabe, the building is being used to manufacture counterfeit products of Unilab particularly, Revicon multivitamins. By virtue of such information, Besarra, Special Investigator of the NBI, filed an application in the RTC for the issuance of a search warrant for the seizure of counterfeit Revicon multivitamins, finished or unfinished, and the documents used in recording, manufacture and/or importation, distribution and/or sale, or the offering for sale, sale and/or distribution of the said vitamins. The RTC granted such application and issued a search warrant. The search warrant was implemented by the NBI headed by Besarra, in coordination with Unilab employees. No fake Revicon multivitamins were found; instead, they found and seized sealed boxes which when opened, contained Disudrin and Inoflox. Ernesto Isip (Isip), the owner of Shalimar building filed a motion to quash the search warrant. According to him, the items seized were not the items described in the search warrant. Unilab countered that the seizure was justified by the plain view doctrine.

ISSUE:

Whether the seizure of the sealed boxes is valid. (NO)

RULING:

A search warrant, to be valid, must particularly describe the place to be searched and the things to be seized. The officers of the law are to seize only those things particularly described in the search warrant. A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to a crime.

The search is limited in scope so as not to be general or explanatory. Nothing is left to the discretion of the officer executing the warrant.

Objects, articles or papers not described in the warrant but on plain view of the executing officer may be seized by him. However, the seizure by the officer of objects/articles/papers not described in the warrant cannot be presumed as plain view. *The State must adduce evidence, testimonial or documentary, to prove the confluence of the essential requirements for the doctrine to apply, namely: (a) the executing law enforcement officer has a prior justification for an initial intrusion or otherwise properly in a position from which he can view a particular order; (b) the officer must discover incriminating evidence inadvertently; and (c) it must be immediately apparent to the police that the items they observe may be evidence of a crime, contraband, or otherwise subject to seizure.*

The doctrine is not an exception to the warrant. It merely serves to supplement the prior justification - whether it be a warrant for another object, hot pursuit, search as an incident to a lawful arrest or some other legitimate reason for being present, unconnected with a search directed against the accused. The doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. It is a recognition of the fact that when executing police officers comes across immediately incriminating evidence not covered by the warrant, they should not be required to close their eyes to it, regardless of whether it is evidence of the crime they are investigating or evidence of some other crime. It would be needless to require the police to obtain another warrant. Under the doctrine, there is no invasion of a legitimate expectation of privacy and there is no search within the meaning of the Constitution.

In this case, Disudrin and/or Inoflox were not listed in the search warrant issued by the court *a quo* as among the properties to be seized by the NBI agents. The warrant specifically authorized the officers only to seize "counterfeit Revicon multivitamins, finished or unfinished, and the documents used in recording, manufacture and/or importation, distribution and/or sale, or the offering for sale, sale and/or distribution of the said vitamins." The implementing officers failed to find any counterfeit Revicon multivitamins, and instead seized sealed boxes which, when opened at the place where they were found, turned out to contain Inoflox and Disudrin.

It was thus incumbent on the NBI agents and the petitioner to prove their claim that the items were seized based on the plain view doctrine. It is not enough to prove that the sealed boxes were in the plain view of the NBI agents; evidence should have been adduced to prove the existence of all the essential requirements for the application of the doctrine during the hearing of the respondents' motion to quash, or at the very least, during the hearing of the NBI and the petitioner's motion for reconsideration on April 16, 2004. The immediately apparent aspect, after all, is central to the plain view exception relied upon by the petitioner and the NBI. There is no showing that the NBI and the petitioner even attempted to adduce such evidence. In fact, the petitioner and the NBI failed to present any of the NBI agents who executed the warrant, or any of the petitioner's representative who was present at the time of the enforcement of the warrant to prove that the enforcing officers discovered the sealed boxes inadvertently, and that such boxes and their contents were incriminating and immediately apparent. *It must be stressed that only the NBI agent/agents who enforced the warrant had personal knowledge whether the sealed boxes and their contents thereof were incriminating and that they were immediately apparent.* There is even no showing that the NBI agents knew the contents of the sealed boxes before they were opened

SKECHERS, U.S.A., INC., *Petitioner*, -versus- INTER PACIFIC INDUSTRIAL TRADING CORP. and/or INTER PACIFIC TRADING CORP. and/or STRONG SPORTS GEAR CO., LTD., and/or STRONGSHOES WAREHOUSE and/or STRONG FASHION SHOES TRADING and/or TAN TUAN HONG and/or VIOLETA T. MAGAYAGA and/or JEFFREY R. MORALES and/or any of its other proprietor/s, directors, officers, employees and/or occupants of its premises located at S-7, Ed & Joe's Commercial Arcade, No. 153 Quirino Avenue, Parañaque City, *Respondents.*
G.R. No. 164321, FIRST DIVISION, November 30, 2006, CHICO-NAZARIO, *J.*

The power to issue search warrants is exclusively vested with the trial judges in the exercise of their judicial function. And inherent in the courts' power to issue search warrants is the power to quash warrants already issued.

In the case at bar, the subject search warrant was issued allegedly in connection with trademark infringement, particularly the unauthorized use of the "S" logo by respondent in their Strong rubber shoes. After conducting the hearing on the application for a search warrant, the court a quo was initially convinced that there was sufficient reason to justify the issuance of the search warrant. However, upon motion of respondent to quash the search warrant, the lower court changed its position and declared that there was no probable cause to issue the search warrant as there was no colorable imitation between respondent's trademark and that of petitioner.

FACTS:

Skechers, USA (Skechers) is a foreign company engaged in the manufacture of foot wear, not doing business in the Philippines. Skechers registered the trademark "S" within an oval design (S logo) to be used in men, women, and children's footwear. Sometime in March 2002, Skechers engaged the service of Zetetic Far East, Inc. (Zetetic), a private investigative firm, to conduct an investigation on Inter Pacific Industrial Trading Corp. (Inter Pacific), in coordination with the NBI to confirm if Inter Pacific is indeed engaged in the importation, distribution, and sale of unauthorized products bearing the S logo. On April 2002, Alvin Ambion, market researcher for Zetetic, visited the warehouse of Inter Pacific. He saw different kinds of footwear bearing the S logo, and found out through the caretakers that Inter Pacific is importing footwear from China and the same is distributing the footwear to wholesalers and retailers. He further discovered that Inter Pacific has an outlet store in Baclaran. With this information, the counsel for Skechers filed a letter complaint with the NBI to assist them to stop the importation, distribution, and sale of Inter Pacific footwear bearing the S logo. The NBI conducted further investigation; and as a result thereof, applied for a search warrant in Manila RTC for infringement of trademark allegedly committed by Inter Pacific. The RTC found probable cause and issued a search warrant on the warehouse and outlet store of Inter Pacific. By virtue thereof, the NBI seized footwear belonging to Inter Pacific bearing the S logo. Inter Pacific filed a motion to quash the search warrant alleging that there is no confusing similarity between Inter Pacific's footwear and Skechers' footwear. The RTC ruled that Inter Pacific's footwear is not confusingly similar to Skechers' and therefore there is no infringement committed. Because of such ruling, the RTC granted the motion to quash filed by Inter Pacific.

ISSUE:

Whether the RTC erred in granting the motion to quash.(NO)

RULING:

It is paramount to stress that the power to issue search warrants is exclusively vested with the trial judges in the exercise of their judicial function. And inherent in the courts' power to issue search warrants is the power to quash warrants already issued. After the judge has issued a warrant, he is not precluded to subsequently quash the same, if he finds upon re-evaluation of the evidence that no probable cause exists. Though there is no fixed rule for the determination of the existence of probable cause since the existence depends to a large degree upon the finding or opinion of the judge conducting the examination, however, the findings of the judge should not disregard the facts before him nor run counter to the clear dictates of reason.

In the determination of probable cause, the court must necessarily resolve whether or not an offense exists to justify the issuance or quashal of the search warrant. In the case at bar, the subject search warrant was issued allegedly in connection with trademark infringement, particularly the unauthorized use of the "S" logo by respondent in their Strong rubber shoes. After conducting the hearing on the application for a search warrant, the court a quo was initially convinced that there was sufficient reason to justify the issuance of the search warrant. However, upon motion of respondent to quash the search warrant, the lower court changed its position and declared that there was no probable cause to issue the search warrant as there was no colorable imitation between respondent's trademark and that of petitioner.

Based on its appreciation of the respective parties' arguments and the pieces of evidence, particularly the samples of the original Skechers rubber shoes vis-à-vis respondent's Strong rubber shoes, the trial court concluded that respondent's appropriation of the symbol "S" on their rubber shoes does not constitute an infringement on the trademark of petitioner. This exercise of judgment was further strengthened by the affirmation of the Court of Appeals that public respondent judge did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the acts of respondent do not constitute trademark infringement in light of the factual and legal issues presented before it for consideration.

In ruling that there was no colorable imitation of petitioner's trademark in light of the factual milieu prevalent in the instant case, the trial court may not be faulted for reversing its initial finding that there was probable cause. **Based on the courts' inherent power to issue search warrants and to quash the same, the courts must be provided with the opportunity to correct itself of an error inadvertently committed. After reevaluating the evidence presented before it, the trial court may reverse its initial finding of probable cause in order that its conclusion may be made to conform to the facts prevailing in the instant case.**

Furthermore, the court was acting reasonably when it went into a discussion of whether or not there was trademark infringement, this is so because in the determination of the existence of probable cause for the issuance or quashal of a warrant, it is inevitable that the court may touch on issues properly threshed out in a regular proceeding. This finding that there was no colorable imitation of petitioner's trademark is merely preliminary and did not finally determine the merits of the possible criminal proceedings that may be instituted by petitioner. As held in the case of Solid Triangle Sales Corp. v. Sheriff, RTC, Q.C., Br. 93. *1*

TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E. MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALES, JR., and BEN YU LIM, JR., *Petitioners*, -versus- MAGDALENO M. PEÑA and HON. MANUEL Q. LIMSIACO, JR., as Judge Designate of the Municipal Trial Court in Cities, Bago City, *Respondents*.

G.R. No. 143591, SECOND DIVISION, May 5, 2010, PEREZ, *J.*

Judges are not allowed to follow blindly the prosecutor's bare certification as to the existence of probable cause. There was a clear indication that the judge blindly followed the certification of a city prosecutor as to the existence of probable cause for the issuance of a warrant of arrest. The careless inclusion of Mr. Ben Lim, Jr. in the warrant of arrest shows that the instant case is a matter of persecution rather than prosecution.

FACTS:

A complaint for four counts of Introducing Falsified Documents was filed by Atty. Magdaleno Pea against Teodoro Borlongan, et al. The City Prosecutor found probable cause for the indictment of the petitioners. Warrants of arrest were issued. However, despite Mr. Ben Lim Jr. not being included among those charged and despite the filing of the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation raising among others the issue that he was not even a member of the Board of directors of Urban Bank, a warrant of arrest was likewise issued against him.

ISSUE:

Whether there was a proper issuance of warrant of arrest against the petitioners and Mr. Lim, Jr. (NO)

RULING:

In the issuance of a warrant of arrest, the judge must personally determine the existence of probable cause. The judge has to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification. Although the extent of the judge's personal examination depends on the circumstances of each case, he cannot rely on the bare certification alone. The warrant of arrest also issues because of the records which sustain it. He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant. An arrest without a probable cause is an unreasonable seizure of a person, and violates the privacy of persons.

There was a clear indication that the judge blindly followed the certification of a city prosecutor as to the existence of probable cause for the issuance of a warrant of arrest. The careless inclusion of Mr. Ben Lim, Jr. in the warrant of arrest shows that the instant case is a matter of persecution rather than prosecution.

ROWLAND KIM SANTOS, *Petitioner*, -versus- PRYCE GASES, INC., VELASCO, JR., *Respondent*.
G.R. No. 165122, SECOND DIVISION, November 23, 2007, TINGA, *J.*

Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the object sought in connection with the offense are in the place sought to be searched.
The application for search warrant is based on violation of RA 623; this law creates a presumption of the unlawful use of gas cylinders based on two separate acts, namely, the unauthorized use of the cylinder by a person other than the registered manufacturer and the possession thereof by a dealer. The confluence of these circumstances, namely: the fact of possession and distribution of the gas cylinders

and the claim by Pryce that it did not authorize Sun Gas to distribute the same was a sufficient indication that Sun Gas is probably guilty of the illegal use of the gas cylinders punishable under RA 623.

FACTS:

Pryce is a distributor of LPG products in Visayas and Mindanao. The LPG products are contained in steel cylinders manufactured for Pryce's use. Pryce noticed a decline in the return of its cylinders for refilling. Pryce suspected that the LPG cylinders were removed off the market circulation because it is being refilled by their competitors; one of whom is Sun Gas which Santos owns. So, Pryce sought the assistance of Criminal Investigation and Detection Group (CIDG) to recover LPG cylinders allegedly in the possession of Sun Gas. CIDG then conducted surveillance on Sun Gas' warehouse and saw LPG cylinders. CIDG and Pryce then applied for a search warrant in the RTC and the same was granted. Pryce anchored its application for search warrant on the basis that Sun Gas is illegally using and distributing its LPG cylinders without its authority, in violation of RA 623. The RTC then issued a search warrant authorizing the seizure of Pryce's LPG cylinders. Santos then filed a motion to quash search warrant with the RTC for lack of probable cause. The RTC granted Santos' motion to quash on the ground that the seized items were insufficient to indict Santos of the crime charged. It enunciated that mere possession of Pryce's LPG cylinders seized from Sun Gas was not illegal per se, absent any showing that Sun Gas illegally used the same without the consent of Pryce.

ISSUE:

Whether the RTC erred in granting the motion to quash. (YES)

RULING:

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction. The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. However, the findings of the judge should not disregard the facts before him nor run counter to the clear dictates of reason. The application for search warrant is based on violation of RA 623; this law creates a presumption of the unlawful use of gas cylinders based on two separate acts, namely, the unauthorized use of the cylinder by a person other than the registered manufacturer and the possession thereof by a dealer. The confluence of these circumstances, namely: the fact of possession and distribution of the gas cylinders and the claim by Pryce that it did not authorize Sun Gas to distribute the same was a sufficient indication that Sun Gas is probably guilty of the illegal use of the gas cylinders punishable under RA 623.

ROWLAND KIM SANTOS, *Petitioner*, -versus- PRYCE GASES, INC., VELASCO, JR., *Respondent*.
G.R. No. 165122, SECOND DIVISION, November 23, 2007, TINGA, *J*.

The requisites for a valid search warrant are: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized.

The application for search warrant is based on violation of RA 623; this law creates a presumption of the unlawful use of gas cylinders based on two separate acts, namely, the unauthorized use of the

cylinder by a person other than the registered manufacturer and the possession thereof by a dealer. The confluence of these circumstances, namely: the fact of possession and distribution of the gas cylinders and the claim by Pryce that it did not authorize Sun Gas to distribute the same was a sufficient indication that Sun Gas is probably guilty of the illegal use of the gas cylinders punishable under RA 623.

FACTS:

Pryce is a distributor of LPG products in Visayas and Mindanao. The LPG products are contained in steel cylinders manufactured for Pryce's use. Pryce noticed a decline in the return of its cylinders for refilling. Pryce suspected that the LPG cylinders were removed off the market circulation because it is being refilled by their competitors; one of whom Sun Gas which Santos owns. Pryce sought the assistance of Criminal Investigation and Detection Group (CIDG) to recover LPG cylinders allegedly in the possession of Sun Gas. CIDG then conducted surveillance on Sun Gas' warehouse and saw LPG cylinders. CIDG and Pryce then applied for a search warrant in the RTC and the same was granted. Pryce anchored its application for search warrant on the basis that Sun Gas is illegally using and distributing its LPG cylinders without its authority, in violation of RA 623. The RTC then issued a search warrant authorizing the seizure of Pryce's LPG cylinders. Santos then filed a motion to quash search warrant with the RTC for lack of probable cause. The RTC granted Santos' motion to quash on the ground that there is no probable cause.

ISSUE:

Whether the requisites for a valid search warrant have been complied with. (YES)

RULING:

The requisites for a valid search warrant are: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. The application for search warrant is based on violation of RA 623; this law creates a presumption of the unlawful use of gas cylinders based on two separate acts, namely, the unauthorized use of the cylinder by a person other than the registered manufacturer and the possession thereof by a dealer. The confluence of these circumstances, namely: the fact of possession and distribution of the gas cylinders and the claim by Pryce that it did not authorize Sun Gas to distribute the same was a sufficient indication that Sun Gas is probably guilty of the illegal use of the gas cylinders punishable under RA 623.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ESTELA TUAN y BALUDDA, *Accused-Appellant.*
G.R. No. 176066, FIRST DIVISION, August 11, 2010, LEONARDO-DE CASTRO, *J*.

A description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the

community. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.

The judge found probable cause for the issuance of the search warrant after said judge's personal examination of SPO2 Fernandez, and the informants. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination.

FACTS:

Informants arrived at the office of the Criminal Investigation Detention Group (CIDG) and reported to SP02 Fernandez that Estela Tuan (Estela) had been selling Marijuana in their barangay. SPO2 Fernandez then set up Estela by directing the informants to buy marijuana from her. The sale was successful so they brought the purchased marijuana for laboratory examination. When it was confirmed that it was indeed arijuana, SPO2 Fernandez and the informants filed with MTCC an application for the issuance of a search warrant. Upon examination of SPO2 Fernandez and the informants, the judge found probable cause and granted the search warrant. The search warrant directed SPO2 Fernandez and his team to seize marijuana leaves and provided the location of Estela's house. By virtue thereof, SPO2 Fernandez and his team went to the premises of Estela and on its second floor, found numerous amounts of marijuana leaves. They then seized the marijuana and filed a case against Estela for illegal possession of dangerous drugs. Estela contended that the search warrant is invalid since the requisites for a valid search warrant has not been complied with. According to her, there was no probable cause because the informants made misrepresentations of fact when they were being examined by the judge in the determination of probable cause. She alleged that the search warrant failed to particularly describe the place to be searched because her house consists of two floors composed of several rooms.

ISSUE:

Whether there is a valid search warrant. (YES)

RULING:

The judge found probable cause for the issuance of the search warrant after said judge's personal examination of SPO2 Fernandez, and the informants. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched. Such substantial basis exists in this case.

With regard to Estela's contention that the search warrant did not particularly describe the place to be searched; the address and description of the place to be searched in the search warrant was specific enough. There was only one house located at the stated address, which was accused-appellant's residence, consisting of a structure with two floors and composed of several rooms.

ELIDAD KHO and VIOLETA KHO, *Petitioners*, -versus- HON. ENRICO LANZANAS, Presiding Judge of the Regional Trial Court of Manila – Branch 7 and SUMMERVILLE GENERAL MERCHANDISING, *Respondents*.
G.R. No. 150877, FIRST DIVISION, May 4, 2006, CHICO-NAZARIO, *J*.

The determination of the existence of probable cause is not concerned with the question of whether the offense charged has been or is being committed in fact, or whether the accused is guilty or innocent, but only whether the applicant has reasonable grounds for his belief. Probable cause existed from the affidavits of SPO4 Nedita Balagtas, the police officer who headed the surveillance, and from Summerville who received reliable information involving illegal manufacture of Chin Chun Su products.

FACTS:

Shun Yih Chemistry Factory (SYCF) is a business operating in Taiwan engaged in the manufacture of Chin Chun Su cosmetics. It appointed Young Factor Enterprises in the Philippines, owned and operated by Quintin Cheng, as distributor of Chin Chun Su products in the Philippines. Quintin Cheng is registered with the Bureau of Food and Drugs (BFAD) as distributor of Chin Chun Su products. Quintin Cheng subsequently secured a supplemental registration for Chin Chun Su. This supplemental registration was ordered cancelled by the Bureau of Patents, Trademarks and Technology Transfer on the ground of failure to file the required affidavit of non-use as required by the Intellectual Property Code.

Notwithstanding this cancellation, Quintin Cheng executed an Assignment of Trademark wherein he sold all his right, title, interest and goodwill in the trademark Chin Chun Su to Elidad Kho. Animosity arose between SYCF and Quintin Cheng resulting in the termination of their distributorship agreement. Then SYCF appointed Summerville General Merchandising (Summerville) as exclusive importer, re-packer and distributor of Chin Chun Su products in the Philippines with a Special Power of Attorney to file complaints against usurpers of Chin Chun Su products. Summerville received reliable information that Elidad, Violeta and Roger Kho(petitioners) were engaged in the illegal manufacture and sale of Chin Chun Su products.

With the proliferation of fake Chin Chun Su products, Summerville approached the police in support of the application for a search warrant. They conducted surveillance in two places in Manila and as a result, were able to verify that Chin Chun Su stickers were being affixed in containers, the containers are then transferred to another residence to be filled with cream. With this, they filed an application for search warrant in the RTC which the judge granted. The search warrant led to the seizure of several Chin Chun Su products. The petitioners filed a motion to quash search warrant for lack of probable cause.

ISSUE:

Whether there is probable cause for the issuance of a search warrant. (YES)

RULING:

Probable cause existed from the affidavits of SPO4 Nedita Balagtas, the police officer who headed the surveillance, and from Summerville who received reliable information involving illegal manufacture of Chin Chun Su products. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference as long as there was substantial basis for that determination.

Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.

SKECHERS, U.S.A., INC., *Petitioner*, -versus- INTER PACIFIC INDUSTRIAL TRADING CORP., and/or INTER PACIFIC TRADING CORP. and/or STRONG SPORTS GEAR CO., LTD., and/or STRONGSHOES WAREHOUSE and/or STRONG FASHION SHOES TRADING and/or TAN TUAN HONG and/or VIOLETA T. MAGAYAGA and/or JEFFREY R. MORALES and/or any of its other proprietor/s, directors, officers, employees and/or occupants of its premises located at S-7, Ed & Joe's Commercial Arcade, No. 153 Quirino Avenue, Parañaque City, *Respondents*. G.R. No. 164321, FIRST DIVISION, March 23, 2011, CHICO-NAZARIO, *J*.

After a judge has issued a search warrant, he is not precluded to subsequently quash the same, if he finds upon re-evaluation of the evidence that no probable cause exists. After conducting the hearing on the application for a search warrant, the RTC was initially convinced that there was sufficient reason to justify the issuance of the search warrant. However, upon motion of Inter Pacific to quash the search warrant, the RTC changed its position and declared that there was no probable cause to issue the search warrant as there was no infringement committed by Inter Pacific.

FACTS:

Skechers, USA (Skechers) is a foreign company engaged in the manufacture of foot wear, not doing business in the Philippines. Skechers registered the trade mark "S" within an oval design (S logo) to be used in men, women, and children's footwear. Skechers engaged the services of Zetetic Far East, Inc. (Zetetic), a private investigative firm, to conduct an investigation on Inter Pacific Industrial Trading Corp. (Inter Pacific), in coordination with the NBI to confirm if Inter Pacific is indeed engaged in the importation, distribution, and sale of unauthorized products bearing the S logo. Alvin Ambion, market researcher for Zetetic, visited the warehouse of Inter Pacific.

He saw different kinds of footwear bearing the S logo, and found out through the caretakers that Inter Pacific is importing footwear from China and the same is distributing the footwear to wholesalers and retailers. He further discovered that Inter Pacific has an outlet store in Baclaran. With this information, the counsel for Skechers filed a letter complaint with the NBI to assist them to stop the importation, distribution, and sale of Inter Pacific footwear bearing the S logo.

The NBI conducted further investigation; and as a result thereof, applied for a search warrant in Manila RTC for infringement of trademark allegedly committed by Inter Pacific. The RTC found probable cause and issued a search warrant on the warehouse and outlet store of Inter Pacific. By virtue thereof, the NBI seized footwear belonging to Inter Pacific bearing the S logo. Inter Pacific filed a motion to quash the search warrant alleging that there is no confusing similarity between Inter Pacific's footwear and Skechers' footwear. The RTC ruled that Inter Pacific's footwear is not confusingly similar to Skechers' and therefore there is no infringement committed. The RTC granted the motion to quash filed by Inter Pacific since there is no basis for probable cause.

ISSUE:

Whether there is probable cause for the issuance of a search warrant. (NO)

RULING:

In the determination of probable cause, the court must necessarily resolve whether or not an offense exists to justify the issuance or quashal of the search warrant. The subject search warrant was issued allegedly in connection with trademark infringement, particularly the unauthorized use of the S logo by Inter Pacific in their footwear. After conducting the hearing on the application for a search warrant, the RTC was initially convinced that there was sufficient reason to justify the issuance of the search warrant. However, upon motion of Inter Pacific to quash the search warrant, the RTC changed its position and declared that there was no probable cause to issue the search warrant as there was no infringement committed by Inter Pacific. After a judge has issued a search warrant, he is not precluded to subsequently quash the same, if he finds upon re-evaluation of the evidence that no probable cause exists. There is no fixed rule for the determination of the existence of probable cause since it depends to a large degree upon the opinion of the judge conducting the examination. However, the findings of the judge should not disregard the facts before him nor run counter to the clear dictates of reason.

JOSEFINO S. ROAN, *Petitioner*, -versus- THE HONORABLE ROMULO T. GONZALES, PRESIDING JUDGE, REGIONAL TRIAL COURT OF MARINDUQUE, BRANCH XXXVIII; THE PROVINCIAL FISCAL OF MARINDUQUE; THE PROVINCIAL COMMANDER, PC-INP MARINDUQUE, *Respondents*.
G.R. No. 71410, EN BANC, November 25, 1986, CRUZ, *J*.

The examination must be probing and exhaustive, not merely routinary or pro-forma, if the claimed probable cause is to be established. The examining magistrate must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application.

A study of the depositions taken from witnesses Esmael Morada and Jesus Tohilida, who both claimed to be "intelligence informers," shows that they were in the main a mere restatement of their allegations in their affidavits, except that they were made in the form of answers to the questions put to them by the respondent judge. Significantly, the meaningful remark made by Tohilida that they were suspicious of the petitioner because he was a follower of the opposition candidate in the forthcoming election (a "Lecarista") did not excite the respondent judge's own suspicions. This should have put him on guard as to the motivations of the witnesses and alerted him to possible misrepresentations from them.

FACTS:

Respondent Judge said that when PC Capt. Mauro P. Quinosa personally filed his application for a search warrant, he appeared before him in the company of his two witnesses, both of whom likewise presented to him their respective affidavits taken by a police investigator. As the application was not yet subscribed and sworn to, he proceeded to examine Captain Quinosa on the contents thereof to ascertain, among others, if he knew and understood the same. Afterwards, he subscribed and swore to the same before him.

By his own account, all he did was question Captain on the contents of his affidavit only "to ascertain, among others, if he knew and understood the same," and only because "the application was not yet subscribed and sworn to." The suggestion is that he would not have asked any questions at all if the

affidavit had already been completed when it was submitted to him. In any case, he did not ask his own searching questions. He limited himself to the contents of the affidavit. He did not take the applicant's deposition in writing and attach them to the record, together with the affidavit presented to him.

ISSUE:

Whether respondent Judge failed to comply with the proper procedure in issuing the search warrant. (YES)

RULING:

Mere affidavits of the complainant and his witnesses are not sufficient. The examining judge has to take depositions in writing of the complainant and the witnesses he may produce and attach them to the record. Such written deposition is necessary in order that the judge may be able to properly determine the existence or non-existence of the probable cause, to hold liable for perjury the person giving it if it will be found later that his declarations are false.

The rationale of the requirement is to provide a ground for a prosecution for perjury in case the applicant's declarations are found to be false. His application, standing alone, was insufficient to justify the issuance of the warrant sought. It was therefore necessary for the witnesses themselves, by their own personal information, to establish the applicant's claims.

The examination must be probing and exhaustive, not merely routinary or pro-forma, if the claimed probable cause is to be established. The examining magistrate must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application.

A study of the depositions taken from witnesses Esmael Morada and Jesus Tohilida, who both claimed to be "intelligence informers," shows that they were in the main a mere restatement of their allegations in their affidavits, except that they were made in the form of answers to the questions put to them by the respondent judge. Significantly, the meaningful remark made by Tohilida that they were suspicious of the petitioner because he was a follower of the opposition candidate in the forthcoming election (a "Lecarista") did not excite the respondent judge's own suspicions. This should have put him on guard as to the motivations of the witnesses and alerted him to possible misrepresentations from them.

ATTY. HUGOLINO V. BALAYON, JR., *Complainant*, -versus- JUDGE OSCAR E. DINOPOL, REGIONAL TRIAL COURT, BRANCH 24, KORONADAL CITY, *Respondent*.
A.M. No. RTJ-06-1969, FIRST DIVISION, June 15, 2006, CHICO-NAZARIO, *J*.

The examination or investigation which must be under oath may not be in public. It may even be held in the secrecy of his chambers. Far more important is that the examination is not merely routinary but one that is thorough and elicits the required information. To repeat, it must be under oath and must be in writing. Such searching questions and answers are necessary in order that the judge may be able to properly determine the existence or non-existence of the probable cause, to hold for perjury the person giving it if it will be found later that his declarations are false.

In the case at bar, respondent Judge failed to observe his mandate as required by the rules. There was no record of searching questions and answers attached to the records of the case in palpable disregard of the statutory requirement previously quoted.

FACTS:

Filoteo Arcallo with P/Insp. Bing Carreon went to the Hall of Justice to file the application for search warrant. Judge Oscar Dinopol instructed them to have his statement and that of Carreon subscribed first by the City Prosecutor. When they returned to the Chamber of the Executive Judge, he interviewed P/Insp. Carreon and asked Arcallo to narrate in detail the history. The Executive Judge asked further questions and mentioned of securing further written questions and answers from them, but Carreon proposed instead an oral question and answer as he had previous experiences that the search team returned empty-handed because it was easy for court staff to text the person to be searched and warn them. The Executive Judge concurred to the request because according to him, other police members shared the same experience.

ISSUE:

Whether respondent judge failed to comply with the proper procedure in issuing the search warrant. (YES)

RULING:

The foregoing provisions provides that the judge must, before issuing the warrant, personally examine, under oath or affirmation, the complainant and any witnesses he may produce and take their testimonies in writing, and attach them to the record, in addition to any affidavits presented to him.

Mere affidavits of the complainant and his witnesses are thus not sufficient. The examining Judge has to make searching questions and elicit answers of the complainant and the witnesses he may produce in writing and to attach them to the record.

The searching questions propounded to the applicant of the search warrant and his witnesses must depend to a large extent upon the discretion of the Judge just as long as the answers establish a reasonable ground to believe the commission of a specific offense, and that the applicant is one authorized by law, and that said answers particularly described with certainty the place to be searched and the persons or things to be seized. The examination or investigation which must be under oath may not be in public. It may even be held in the secrecy of his chambers. Far more important is that the examination is not merely routinary but one that is thorough and elicits the required information. To repeat, it must be under oath and must be in writing. Such searching questions and answers are necessary in order that the judge may be able to properly determine the existence or non-existence of the probable cause, to hold for perjury the person giving it if it will be found later that his declarations are false.

In the case at bar, respondent Judge failed to observe his mandate as required by the rules. There was no record of searching questions and answers attached to the records of the case in palpable disregard of the statutory requirement previously quoted.

WILLIAM C. YAO, SR., LUISA C. YAO, RICHARD C. YAO, WILLIAM C. YAO JR., and ROGER C. YAO, *Petitioners*, -versus- THE PEOPLE OF THE PHILIPPINES, PETRON CORPORATION and PILIPINAS SHELL PETROLEUM CORP., and its Principal, SHELL INT'L PETROLEUM CO. LTD., *Respondents*.
G.R. No. 168306, THIRD DIVISION, June 19, 2007, CHICO-NAZARIO, *J*.

The searching questions propounded to the applicant and the witnesses depend largely on the discretion of the judge. The examination must be probing and exhaustive, not merely routinary, general, peripheral, perfunctory or pro forma. The judge must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application.

Respondent Judge lengthily inquired into the circumstances of the case. He required the NBI agent to confirm the contents of his affidavit, inquired as to where the test-buys were conducted and by whom, verified whether PSPC and PETRON have registered trademarks or tradenames, required the NBI witness to explain how the test-buys were conducted and to describe the LPG cylinders purchased from Masagana Gas Corporation, inquired why the applications for Search Warrant were filed in Cavite City considering that Masagana Gas Corporation was located in Trece Martires, Cavite, inquired whether the NBI Agent has a sketch of the place and if there was any distinguishing sign to identify the place to be searched, and inquired about their alleged tailing and monitoring of the delivery trucks.

FACTS:

NBI agent Oblanca filed two applications for search warrant with the RTC of Cavite City against petitioners and other occupants of the MASAGANA compound, for alleged violation of Section 155, in relation to Section 170 of RA 8293, otherwise known as The Intellectual Property Code. The two applications for search warrant uniformly alleged that per information, belief, and personal verification of Oblanca, the petitioners are actually producing, selling, offering for sale and/or distributing LPG products using steel cylinders owned by, and bearing the tradenames, trademarks, and devices of Petron and Pilipinas Shell, without authority and in violation of the rights of the said entities. After conducting the preliminary examination on Oblanca and Alajar, and upon reviewing their sworn affidavits and other attached documents, Judge Sadang found probable cause and correspondingly issued search warrants.

Petitioners contend that although Judge Sadang examined Oblanca and Alajar, the former did not ask exhaustive questions; and that the questions Judge Sadang asked were merely rehash of the contents of the affidavits of Oblanca and Alajar

ISSUE:

Whether the form and manner of questioning made by Judge Sadang complied with the requirements. (YES)

RULING:

Respondent Judge lengthily inquired into the circumstances of the case. He required the NBI agent to confirm the contents of his affidavit, inquired as to where the test-buys were conducted and by whom, verified whether PSPC and PETRON have registered trademarks or tradenames, required the NBI witness to explain how the test-buys were conducted and to describe the LPG cylinders purchased from Masagana Gas Corporation, inquired why the applications for Search Warrant were

filed in Cavite City considering that Masagana Gas Corporation was located in Trece Martires, Cavite, inquired whether the NBI Agent has a sketch of the place and if there was any distinguishing sign to identify the place to be searched, and inquired about their alleged tailing and monitoring of the delivery trucks.

Since probable cause is dependent largely on the opinion and findings of the judge who conducted the examination and who had the opportunity to question the applicant and his witnesses, the findings of the judge deserves great weight. The reviewing court can overturn such findings only upon proof that the judge disregarded the facts before him or ignored the clear dictates of reason. The Court finds no compelling reason to disturb Judge Sadang's findings.

WILLIAM C. YAO, SR., LUISA C. YAO, RICHARD C. YAO, WILLIAM C. YAO JR., and ROGER C. YAO, *Petitioners*, -versus- THE PEOPLE OF THE PHILIPPINES, PETRON CORPORATION and PILIPINAS SHELL PETROLEUM CORP., and its Principal, SHELL INT'L PETROLEUM CO. LTD., *Respondents*.
G.R. No. 168306, THIRD DIVISION, June 19, 2007, CHICO-NAZARIO, *J*.

The searching questions propounded to the applicant and the witnesses depend largely on the discretion of the judge. Although there is no hard-and fast rule governing how a judge should conduct his investigation, it is axiomatic that the examination must be probing and exhaustive, not merely routinary, general, peripheral, perfunctory or pro forma. The judge must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application.

The search warrants in question commanded any peace officer to make an immediate search on MASAGANA compound located at Governors Drive, Barangay Lapidario, Trece Martires, Cavite City. It appears that the raiding team had ascertained and reached MASAGANA compound without difficulty since MASAGANA does not have any other offices/plants in Trece Martires, Cavite City. Moreover, Oblanca, who was with the raiding team, was already familiar with the MASAGANA compound as he and Alajar had monitored and conducted test-buys thereat.

FACTS:

NBI agent Oblanca filed two applications for search warrant with the RTC of Cavite City against petitioners and other occupants of the MASAGANA compound, for alleged violation of Section 155, in relation to Section 170 of RA 8293, otherwise known as The Intellectual Property Code. The two applications for search warrant uniformly alleged that per information, belief, and personal verification of Oblanca, the petitioners are actually producing, selling, offering for sale and/or distributing LPG products using steel cylinders owned by, and bearing the tradenames, trademarks, and devices of Petron and Pilipinas Shell, without authority and in violation of the rights of the said entities. After conducting the preliminary examination on Oblanca and Alajar, and upon reviewing their sworn affidavits and other attached documents, Judge Sadang found probable cause and correspondingly issued search warrants.

Petitioners posit that the applications for search warrants of Oblanca did not specify the particular area to be searched, hence, giving the raiding team wide latitude in determining what areas they can search. They aver that the search warrants were general warrants, and are violative of the Constitution. Petitioners also assert that since the MASAGANA compound is about 10,000.00 square meters with several structures erected on the lot, the search warrants should have defined the areas to be searched.

ISSUE:

Whether the form and manner of questioning made by Judge Sadang complied with the requirements. (YES)

RULING:

The search warrants in question commanded any peace officer to make an immediate search on MASAGANA compound located at Governors Drive, Barangay Lapidario, Trece Martires, Cavite City. It appears that the raiding team had ascertained and reached MASAGANA compound without difficulty since MASAGANA does not have any other offices/plants in Trece Martires, Cavite City. Moreover, Oblanca, who was with the raiding team, was already familiar with the MASAGANA compound as he and Alajar had monitored and conducted test-buys thereat.

Even if there are several structures inside the MASAGANA compound, there was no need to particularize the areas to be searched because, as correctly stated by Petron and Pilipinas Shell, these structures constitute the essential and necessary components of the petitioner's business and cannot be treated separately as they form part of one entire compound. The compound is owned and used solely by MASAGANA. What the law requires is that, the place to be searched can be distinguished in relation to the other places in the community. Indubitably, this requisite was complied with.

ANDY QUELNAN y QUINO, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 166061, THIRD DIVISION, July 6, 2007, TINGA, *J.*

Where the search warrant is issued for the search of specifically described premises only and not for the search of a person, the failure to name the owner or occupant of such property in the affidavit and search warrant does not invalidate the warrant. While petitioner may not be the person subject of the search, the fact that he was caught in flagrante delicto necessitated his valid warrantless arrest. Therefore, the fact that petitioner's name was not indicated in the search warrant is immaterial.

FACTS:

The Police Assistance and Reaction Against Crime (PARAC) was tasked to implement a search warrant to a certain Bernard Lim for probably possessing shabu. The team was escorted to the unit by security officer Punsaran, upon arrival at the place to be searched, Quelnan opened the door. The team presented the search warrant and proceeded with the search. In the presence of Quelnan and Punsaran, they found on top of a bedroom table three pieces of transparent plastic sachet containing white crystalline substance which was later examined as shabu. Quelnan was arrested for violation of Sec. 16 Art. III of RA 6425.

Quelnan in his defense averred that he is not residing in the said unit, but he is the registered owner of the said unit, which he leased to Sung Kok Lee; that he was there during the search for he was collecting the rent; that he was forced to sign some documents at gunpoint, handcuffed and brought to PARAC Office.

According to Quelnan, the CA erred in declaring that where a search warrant is issued for the search of specifically described premises and not of a person, the omission of the name of the owner or occupant of such property in the warrant does not invalidate the same. Petitioner contends that this

doctrine applies only if the search warrant does not indicate with all certainty the owner or occupant of the premises sought to be searched; on the contrary, the subject search warrant indicated with absolute clarity that the person subject thereof is Kim.

ISSUE:

Whether the search warrant was validly implemented. (YES)

RULING:

Nowhere in said rule or any other provision in the Revised Rules of Criminal Procedure is it required that the search warrant must name the person who occupies the described premises. Where the name of the owner of the premises sought to be searched is incorrectly inserted in the search warrant, it is not a fatal defect if the legal description of the premises to be searched is otherwise correct so that no discretion is left to the officer making the search as to the place to be searched.

The police officers were ordered to make an immediate search of the premises mentioned and to seize and take possession of shabu. Furthermore, they were directed to bring "persons to be dealt with as the law may direct." While petitioner may not be the person subject of the search, the fact that he was caught in flagrante delicto necessitated his valid warrantless arrest. Therefore, the fact that petitioner's name was not indicated in the search warrant is immaterial.

FRANK UY and UNIFISH PACKING CORPORATION, *Petitioners*, -versus- BUREAU OF INTERNAL REVENUE and HON. MERCEDES GOZO-DADOLE, *Respondents*.
G.R. No. 129651, FIRST DIVISION, October 20, 2000, KAPUNAN, *J.*

The use of a generic term or a general description in a warrant is acceptable only when a more specific description of the things to be seized is unavailable. The failure to employ the specificity available will invalidate a general description in a warrant.

The general description of most of the documents listed in the warrants does not render the entire warrant void. Insofar as the warrants authorize the search and seizure of unregistered delivery receipts and unregistered purchase and sales invoices, the warrants remain valid. The search warrant is severable, and those items not particularly described may be cut off without destroying the whole warrant. Accordingly, the items not particularly described in the warrants ought to be returned to petitioners.

FACTS:

Petitioners assail the validity of the warrants issued for the search of the premises of the Unifish Packing Corporation, and pray for the return of the items seized by virtue thereof. Contending that there are inconsistencies in the description of the place to be searched, the petitioners observe that the caption of Search Warrant A-1 indicates the address of Uy Chin Ho alias Frank Uy as Hernan Cortes St., Cebu City while the body of the same warrant states the address as Hernan Cortes St., Mandaue City. Parenthetically, Search Warrants A-2 and B consistently state the address of petitioner as Hernan Cortes St., Mandaue City. Also they alleged that there is lack of particularity in the description of the things seized. The things to be seized were described in the following manner: Multiple sets of Books of Accounts; Ledgers, Journals, Columnar Books, Cash Register Books, Sales Books or Records; Provisional & Official Receipts; Production Record Books/Inventory Lists, Stock

Cards; Unregistered Delivery Receipts; Unregistered Purchase & Sales Invoices; Sales Records, Job Order; Corporate Financial Records; and Bank Statements/Cancelled Checks.

ISSUE:

Whether the search warrant was valid (YES)

RULING:

The Constitution requires, for the validity of a search warrant, that there be a particular description of the place to be searched and the persons of things to be seized. The rule is that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. Any designation or description known to the locality that points out the place to the exclusion of all others, and on inquiry leads the officers unerringly to it, satisfies the constitutional requirement. It was not shown that a street similarly named Hernan Cortes could be found in Cebu City. Nor was it established that the enforcing officers had any difficulty in locating the premises. That Search Warrant A-1, therefore, inconsistently identified the city where the premises to be searched is not a defect that would spell the warrants invalidation in this case.

Most of the items listed in the warrants fail to meet the test of particularity, especially since witness Abos had furnished the judge photocopies of the documents sought to be seized. The issuing judge could have formed a more specific description of these documents from said photocopies instead of merely employing a generic description thereof. As regards the terms unregistered delivery receipts and unregistered purchase & sales invoices, however, we hold otherwise. The Solicitor General correctly argues that the serial markings of these documents need not be specified as it is not possible to do so precisely because they are unregistered.

The general description of most of the documents listed in the warrants does not render the entire warrant void. Insofar as the warrants authorize the search and seizure of unregistered delivery receipts and unregistered purchase and sales invoices, the warrants remain valid. The search warrant is severable, and those items not particularly described may be cut off without destroying the whole warrant. Accordingly, the items not particularly described in the warrants ought to be returned to petitioners.

HARRY S. STONEHILL, ROBERT P. BROOKS, JOHN J. BROOKS and KARL BECK, *Petitioners*, - versus- HON. JOSE W. DIOKNO, in his capacity as SECRETARY OF JUSTICE, JOSE LUKBAN, in his capacity as Acting Director of the National Bureau of Investigation; SPECIAL PROSECUTORS PEDRO D. CENZON, EFREN I. PLANA and MANUEL VILLAREAL, JR. and ASST. FISCAL MANASES G. REYES, JUDGE AMADO ROAN, Municipal Court of Manila, JUDGE ROMAN CANSINO, Municipal Court of Manila, JUDGE HERMOGENES CALUAG, Court of First Instance of Rizal-Quezon City Branch, and JUDGE DAMIAN JIMENEZ, Municipal Court of Quezon City, *Respondents*.
G.R. No. L-19550, EN BANC, June 19, 1967, CONCEPCION, *C. J.*

All evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a State.

The Constitution requires that no warrant shall issue but upon probable cause, to be determined by the judge in the manner set forth in said provision and that the warrant shall particularly describe the things to be seized. None of these requirements has been complied with in the contested warrants. No specific offense had been alleged in said applications. Moreover, the warrants authorized the search for and seizure of records pertaining to all business transactions of petitioners regardless of whether the transactions were legal or illegal. It is in violation of the constitutional mandate that the things to be seized be particularly described and it also defeats its major objective which is the elimination of general warrants.

FACTS:

Upon application of the respondents-prosecutors, the respondents-judges issued on different dates 42 search warrants against petitioners and/or the corporations of which they were officers directed to any peace officer to conduct searches and seizures on the books of accounts, financial records and other documents showing all business transactions as "the subject of the offense which is described in the applications adverted to as "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue Code and the Revised Penal Code." The documents and things seized are those found in the offices of the corporations, and those in the residences of petitioners. The petitioners went to the SC alleging that the search warrants are null and void because it contravenes the Constitution. They maintain that the search warrants are in the nature of general warrants and as such, the seizures effected upon the authority thereof are null and void. Relying upon *Moncado v. People's Court (80 Phil. 1),* respondents-prosecutors maintain that, even if the searches and seizures under consideration were unconstitutional, the documents, papers and things seized are admissible in evidence.

ISSUE:

Whether the documents and things seized in the residence of petitioners are admissible in evidence. (NO)

RULING:

The Constitution requires that no warrant shall issue but upon probable cause, to be determined by the judge in the manner set forth in said provision and that the warrant shall particularly describe the things to be seized. None of these requirements has been complied with in the contested warrants. No specific offense had been alleged in said applications. Moreover, the warrants authorized the search for and seizure of records pertaining to all business transactions of petitioners regardless of whether the transactions were legal or illegal. It is in violation of the constitutional mandate that the things to be seized be particularly described and it also defeats its major objective which is the elimination of general warrants.

The position taken in *Moncado* must be abandoned. The exclusionary rule was eventually adopted, realizing that this is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. The reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege. Without that rule, the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means

of coercing evidence as not to permit this Court's high regard as a freedom "implicit in the concept of ordered liberty." The purpose of the exclusionary rule to "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." Indeed, the non-exclusionary rule is contrary, not only to the letter, but also, to the spirit of the constitutional injunction against unreasonable searches and seizures. If the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law. The search warrants for the search of the residence of the three petitioners are null and void, and the searches and seizures made are illegal.

BENJAMIN V. KHO and ELIZABETH ALINDOGAN, *Petitioners*, -versus- HON. ROBERTO L. MAKALINTAL and NATIONAL BUREAU OF INVESTIGATION, *Respondents*.
G.R. No. 94902-06, EN BANC, April 21, 1999, PURISIMA, *J.*

A description of the property to be seized need not be technically accurate nor necessarily precise; and its nature will necessarily vary according to whether the identity of the property, or its character, is the matter of concern. Further, the description is required to be specific only so far as the circumstances will ordinarily allow.

The NBI agents could not have been in a position to know beforehand the exact caliber or make of the firearms to be seized. Consequently, the list submitted in the applications for subject search warrants should be adjudged in substantial compliance with the requirements of law.

FACTS:

NBI Agent Max B. Salvador applied for the issuance of search warrants by the respondent Judge against Banjamin V. Kho, petitioner, in his residence at No. 45 Bb. Ramona Tirona St., BF Homes, Phase I, Paranaque. On the same day, Eduardo T. Arugay, another NBI agent, applied with the same court for the issuance of search warrants against said petitioner in his house at No. 326 McDivitt St., Bgy. Moonwalk, Paranaque. The search warrants were applied for after teams of NBI agents had conducted a personal surveillance and investigation in the two houses referred to on the basis of confidential information they received that the said places were being used as storage centers for unlicensed firearms and "chop-chop" vehicles. On the same day, respondent Judge conducted the necessary examination of the applicants and their witnesses, after which he issued the questioned search warrants. NBI conducted the simultaneous searches on the said residences of the Kho and they were able to confiscate the objects stated in the warrant and the simultaneous searches also resulted in the confiscation of various radio and telecommunication equipment.

The confiscated items were verified in Camp Crame and were proven that all of them are unlicensed. Kho question the validity of the warrant claiming that subject search warrants are general warrants proscribed by the Constitution. According to him, the things to be seized were not detailed out, i.e. the firearms listed were not classified as to size or make, etc.

ISSUE:

Whether the search warrant is valid. (YES)

RULING:

The law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. Otherwise, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things they are looking for. Since the element of time is very crucial in criminal cases, the effort and time spent in researching on the details to be embodied in the warrant would render the purpose of the search nugatory.

The NBI agents could not have been in a position to know beforehand the exact caliber or make of the firearms to be seized. Although the surveillance they conducted did disclose the presence of unlicensed firearms within the premises to be searched, they could not have known the particular type of weapons involved before seeing such weapons at close range, which was of course impossible at the time of the filing of the applications for subject search warrants. It is understandable that the agents of respondent Bureau have no way of knowing whether the guns they intend to seize are a Smith and Wesson or a Beretta. The surveillance conducted could not give the NBI agents a close view of the weapons being transported or brought to the premises to be searched. Thus, they could not be expected to know the detailed particulars of the objects to be seized. Consequently, the list submitted in the applications for subject search warrants should be adjudged in substantial compliance with the requirements of law.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- MODESTO TEE a.k.a. ESTOY TEE, *Accused-Appellant*.
G.R. No. 140546-47, EN BANC, January 20, 2003, QUISUMBING, *J.*

What the Constitution seeks to avoid are search warrants of broad or general characterization or sweeping descriptions, which will authorize police officers to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to an offense.

The description "undetermined amount of marijuana" is specific enough. The officers could readily identify the items to be searched and seized. Further, it was impossible to know the exact amount of marijuana beforehand.

FACTS:

Modesto Tee is a businessman in Baguio City. He requested Danilo Abratique, a taxi driver, to help him transport alleged cigarettes. Abratique then took Tee to a building in Bakakeng, to store the cigarettes.

When the cigarettes turned out to be marijuana, the owner of the building requested that they leave. Subsequently, Abratique drove Tee to La Trinidad "to buy strawberries." However, they went to Sablan and loaded marijuana into the taxi. They went to the house of Abreau, Abratique's relative in Green Valley. Tee rented a room and stored marijuana there. Abreau was bothered with the marijuana being in her house, so she confided in her daughter. Her daughter then informed NBI Agent Fianza. Acting on this information, the NBI and the PNP did a stakeout at Abreau's place, since Tee was supposed to be coming. However, he did not.

Fearing that the operation would be botched, the authorities asked Abreau if they could enter Tee's room. Abreau consented. 13 sacks of marijuana (336.96 kg) were in the room. NBI Agent Lising applied for a search warrant before Judge Reyes; Abratique was the witness. After questioning Abratique, Judge Reyes issued the warrant. It was served to Mr. Tee at home, in Green Valley. 26 boxes of marijuana were found (591.81 kg). A lab test confirmed that the items were marijuana. Two

separate charges were filed against Tee. He filed a motion to quash the search warrant, on the ground that it was too general. He pointed out that the warrant only stated "undetermined amount of marijuana."

ISSUE:

Whether the search warrant is valid. (YES)

RULING:

Yes. The purpose of specifically describing things is to enable the searching officers to identify the items to be searched and seized. This prevents them from committing unlawful search and seizure. The description "undetermined amount of marijuana" is specific enough. The officers could readily identify the items to be searched and seized. Further, it was impossible to know the exact amount of marijuana beforehand.

The constitutional requirement of reasonable particularity of description of the things to be seized is primarily meant to enable the law enforcers serving the warrant to: (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. Technical precision of description is not required, particularly, where by the nature of the goods to be seized, their description must be rather general, since the requirement of a technical description would mean that no warrant could issue.

PEOPLE OF THE PHILIPPINES, represented by Provincial Prosecutor FAUSTINO T. CHIONG, *Petitioner*, -versus- COURT OF APPEALS, JUDGE CAESAR CASANOVA, Presiding Judge, Regional Trial Court, Branch 80, Malolos, Bulacan, AZFAR HUSSAIN, MOHAMMAD SAGED, MUJAHID KHAN, MOHAMMAD ASLAM and MEHMOOD ALI, *Respondents*.
G.R. No. 126379, THIRD DIVISION, June 26, 1998, NARVASA, *C. J.*

What is material in determining the validity of a search is the place stated in the warrant itself, not what the applicants had in their thoughts, or had represented in the proofs they submitted to the court issuing the warrant.

The ambiguity lies outside the instrument, arising from the absence of a meeting of minds as to the place to be searched between the applicants for the warrant and the judge issuing the same; and what was done was to substitute for the place that the judge had written down in the warrant, the premises that the executing officers had in their mind. This should not have been done. It is neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched — although not that specified in the warrant — is exactly what they had in view when they applied for the warrant and had demarcated in their supporting evidence.

FACTS:

An application for a search warrant was made by S/Insp Brillantes against Mr. Azfar Hussain who had allegedly in his possession firearms and explosives at Abigail Variety Store, Apt 1207 Area F. Bagong Buhay Avenue, Sarang Palay, San Jose Del Monte, Bulacan. Search Warrant No. 1068 was issued but was served not at Abigail Variety Store but at Apt. No. 1, immediately adjacent to Abigail Variety Store resulting in the arrest of four Pakistani nationals and the seizure of a number of

different explosives and firearms. In other words, the place actually searched was different and distinct from the place described in the search warrant.

ISSUE:

Whether the particular apartment had been specifically described in the warrant. (NO)

RULING:

The ambiguity lies outside the instrument, arising from the absence of a meeting of minds as to the place to be searched between the applicants for the warrant and the judge issuing the same; and what was done was to substitute for the place that the judge had written down in the warrant, the premises that the executing officers had in their mind. This should not have been done. It is neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched — although not that specified in the warrant — is exactly what they had in view when they applied for the warrant and had demarcated in their supporting evidence.

The place to be searched, as set out in the warrant, cannot be amplified or modified by the officers' own personal knowledge of the premises, or the evidence they adduced in support of their application for the warrant. Such a change is proscribed by the Constitution which requires the search warrant to particularly describe the place to be searched as well as the persons or things to be seized. It would concede to police officers the power of choosing the place to be searched, even if it not be that delineated in the warrant. It would open wide the door to abuse of the search process, and grant to officers executing a search warrant that discretion which the Constitution has precisely removed from them. The particularization of the description of the place to be searched may properly be done only by the judge, and only in the warrant itself; it cannot be left to the discretion of the police officers conducting the search.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- JACK RACHO y RAQUERO, *Appellant*.
G.R. No. 186529, SECOND DIVISION, August 3, 2010, NACHURA, *J.*

Reliable information alone is not sufficient to justify a warrantless arrest. The rule requires, in addition, that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense.

Racho was not committing a crime in the presence of the police officers. Neither did the arresting officers have personal knowledge of facts indicating that the person to be arrested had committed, was committing, or about to commit an offense. At the time of the arrest, Racho had just alighted from the bus and was waiting for a tricycle. Appellant was not acting in any suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Were it not for the information given by the informant, Racho would not have been apprehended and no search would have been made, and the sachet of shabu would not have been confiscated.

FACTS:

A confidential agent of the police transacted with Jack Racho for the purchase of *shabu.* A buy-bust operation was formulated by the police officers to arrest Racho. When appellant alighted from the

bus, the confidential agent pointed to him as the person he transacted with earlier. As Racho was about to board a tricycle, the team approached him and invited him to the police station on suspicion of carrying *shabu*. Racho immediately denied the accusation, but as he pulled out his hands from his pants pocket, a white envelope slipped therefrom which, when opened, yielded a small sachet containing the suspected drug.

ISSUE:

Whether the warrantless arrest of Racho was lawful (NO)

RULING:

Racho was not committing a crime in the presence of the police officers. Neither did the arresting officers have personal knowledge of facts indicating that the person to be arrested had committed, was committing, or about to commit an offense. At the time of the arrest, Racho had just alighted from the bus and was waiting for a tricycle. Appellant was not acting in any suspicious manner that would engender a reasonable ground for the police officers to suspect and conclude that he was committing or intending to commit a crime. Were it not for the information given by the informant, Racho would not have been apprehended and no search would have been made, and the sachet of *shabu* would not have been confiscated.

Neither were the arresting officers impelled by any urgency that would allow them to do away with the requisite warrant. Their office received the tipped information on May 19, 2003. They likewise learned from the informant not only the Racho's physical description but also his name. Although it was not certain that appellant would arrive on the same day (May 19), there was an assurance that he would be there the following day (May 20). Clearly, the police had ample opportunity to apply for a warrant.

MARGARITA AMBRE Y CAYUNI, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 191532, THIRD DIVISION, August 15, 2012, MENDOZA, *J.*

In an arrest in flagrante delicto, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. Clearly, to constitute a valid in flagrante delicto arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

Ambre was caught by the police officers in the act of using shabu and, thus, can be lawfully arrested without a warrant. PO1 Mateo positively identified Ambre sniffing suspected shabu from an aluminum foil being held by Castro.

FACTS:

Pursuant to a tip from a police informant that Abdulah Sultan and his wife, Ina Aderp, were engaged in the selling of dangerous drugs at a residential compound in Caloocan City, a buy-bust operation ensued, resulting in the arrest of Aderp and Moctar Tagoranao. In the course of chasing Sultan, the police officers, PO3 Fernando Moran, PO1 Ronald Mateo, PO2 Randulfo Hipolito, and P/Insp. Jessie

dela Rosa, were led to his house. There, they found Margarita Ambre, Bernie Castro, and Kaycee Mendoza having a pot session. In particular, Ambre was caught sniffing what was suspected as shabu in a rolled up aluminum foil. While PO3 Moran ran after Sultan, PO2 Masi and PO1 Mateo arrested Ambre, Castro, and Mendoza for illegal use of *shabu*.

ISSUE:

Whether the warrantless arrest of Ambre and the search of her person were valid. (YES)

RULING:

Ambre was caught by the police officers in the act of using *shabu* and, thus, can be lawfully arrested without a warrant. PO1 Mateo positively identified Ambre sniffing suspected *shabu* from an aluminum foil being held by Castro. Ambre, however, made much of the fact that there was no prior valid intrusion in the residence of Sultan. The argument is specious. Suffice it to state that prior justification for intrusion or prior lawful intrusion is not an element of an arrest *in flagrante delicto.* Thus, even granting arguendo that the apprehending officers had no legal right to be present in the dwelling of Sultan, it would not render unlawful the arrest of Ambre, who was seen sniffing *shabu* with Castro and Mendoza in a pot session by the police officers. Accordingly, PO2 Masi and PO1 Mateo were not only authorized but were also duty-bound to arrest Ambre together with Castro and Mendoza for illegal use of methamphetamine hydrochloride in violation of Section 15, Article II of R.A. No. 9165.

SR. INSP. JERRY C. VALEROSO, *Petitioner*, -versus- COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 164815, THIRD DIVISION, September 3, 2009, NACHURA, *J.*

A valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence.

The arresting officers served the warrant of arrest without any resistance from Valeroso. They placed him immediately under their control by pulling him out of the bed, and bringing him out of the room with his hands tied. The cabinet which, according to Valeroso, was locked, could no longer be considered as an "area within his immediate control" because there was no way for him to take any weapon or to destroy any evidence that could be used against him.

FACTS:

Sr. Insp. Jerry Valeroso was arrested by virtue of a warrant of arrest allegedly for kidnapping with ransom. At that time, Valeroso was sleeping inside the boarding house of his children. He was awakened by the arresting officers who were heavily armed. They pulled him out of the room, placed him beside the faucet outside the room, tied his hands, and then put him under the care of SPO2 Antonio Disuanco. The other police officers remained inside the room and ransacked the locked cabinet where they found the subject firearm and ammunition. With such discovery, Valeroso was charged with illegal possession of firearm and ammunition.

ISSUE:

Whether the warrantless search and seizure of the firearm and ammunition are valid. (NO)

RULING:

The arresting officers served the warrant of arrest without any resistance from Valeroso. They placed him immediately under their control by pulling him out of the bed, and bringing him out of the room with his hands tied. The cabinet which, according to Valeroso, was locked, could no longer be considered as an "area within his immediate control" because there was no way for him to take any weapon or to destroy any evidence that could be used against him. The arresting officers would have been justified in searching the person of Valeroso, as well as the tables or drawers in front of him, for any concealed weapon that might be used against the former. But under the circumstances obtaining, there was no comparable justification to search through all the desk drawers and cabinets or the other closed or concealed areas in that room itself.

PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus- BERNARDO TUAZON Y NICOLAS, *Accused-appellant*.
G.R. No. 175783, THIRD DIVISION, September 3, 2007, CHICO-NAZARIO, *J.*

When a vehicle is flagged down and subjected to an extensive search, such a warrantless search has been held to be valid as long as the officers conducting the search have reasonable or probable cause to believe, prior to the search, that they would find the instrumentality or evidence pertaining to a crime in the vehicle to be searched.

The police had probable cause to effect the warrantless search of the Gemini car driven by Tuazon. A confidential informer tipped them off that said car was going to deliver shabu at Marville Subdivision. Pursuing said lead, the Antipolo City police sent a team to Marville Subdivision to monitor said vehicle. The information provided by the informer turned out to be correct as, indeed, the Gemini car was spotted in the place where it was said to be bringing shabu.

FACTS:

A confidential informer tipped the Antipolo City police that Bernardo Tuazon, aboard a Gemini car, will be delivering an unspecified amount of *shabu* in Marville Subdivision on the same day. A team of policemen were dispatched to conduct surveillance. When the team arrived and saw the said car, they immediately flagged it down. When Tuazon opened his window for the policemen to identify themselves, PO1 Manuel Padlan saw a gun tucked on Tuazon's waist. The non-production of documents related to the gun prompted the policemen to order Tuazon to get out of the car for the former to search the same. PO3 Glenon Bueno saw five plastic sachets containing *shabu* on the driver's seat. Tuazon was immediately brought to the police station thereafter.

ISSUE:

Whether the warrantless arrest was valid. (YES)

RULING:

The police had probable cause to effect the warrantless search of the Gemini car driven by Tuazon. A confidential informer tipped them off that said car was going to deliver *shabu* at Marville Subdivision.

Pursuing said lead, the Antipolo City police sent a team to Marville Subdivision to monitor said vehicle. The information provided by the informer turned out to be correct as, indeed, the Gemini car was spotted in the place where it was said to be bringing *shabu*. When they stopped the car, they saw a gun tucked in Tuazon's waist. Tuazon did not have any document to support his possession of said firearm which all the more strengthened the police's suspicion. After he was told to step out of the car, they found on the driver's seat plastic sachets containing white powdery substance. These circumstances, taken together, are sufficient to establish probable cause for the warrantless search of the Gemini car and the eventual admission into evidence of the plastic packets against Tuazon.

MARCELO G. SALUDAY, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 215305, EN BANC, April 3, 2018, CARPIO, *J.*

To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.

In view of the foregoing, the bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy.

FACTS:

Bus No. 66 of Davao Metro Shuttle was flagged down by Task Force Davao of the Philippine Army at a checkpoint to check the presence of contraband, illegal firearms or explosives and suspicious individuals. SCAA Buco checked all the baggage and personal effects of the passengers, but a small, gray-black pack bag on the seat at the rear of the bus caught his attention. He lifted the bag and found it too heavy for its small size. SCAA Buco then looked at the male passengers lined outside and noticed that a man in a white shirt (later identified as petitioner) kept peeping through the window towards the direction of the bag. Afterwards, SCAA Buco asked who the owner of the bag was, to which the bus conductor answered that petitioner and his brother were the ones seated at the back. SCAA Buco then requested petitioner to board the bus and open the bag. Petitioner obliged and the bag revealed the following contents: (1) an improvised .30 caliber carbine bearing serial number 64702; (2) one magazine with three live ammunitions; (3) one cacao-type hand grenade; and (4) a ten-inch hunting knife. SCAA Buco then asked petitioner to produce proof of his authority to carry firearms and explosives. Unable to show any, petitioner was immediately arrested and informed of his rights by SCAA Buco.

Petitioner was then brought for inquest before the Office of the City Prosecutor for Davao City. In its Resolution dated 7 May 2009, the latter found probable cause to charge him with illegal possession of high-powered firearm, ammunition, and explosive under PD l 866.

The trial court declared him to be in actual or constructive possession of firearm and explosive without authority or license. The CA affirmed the RTC ruling.

Petitioner raises a pure question of law and argues that they are inadmissible on the ground that the search conducted by Task Force Davao was illegal.

ISSUE:

Whether the search was illegal. (NO)

RULING:

Section 2, Article III of the Constitution, which was patterned after the Fourth Amendment to the United States (U.S.) Constitution, 24 reads:

SEC. 2. The **right of the people** to be secure in their persons, houses, papers, and effects **against unreasonable searches and seizures** of whatever nature and for any purpose shall he inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

Indeed, the constitutional guarantee is not a blanket prohibition. Rather, it operates against "unreasonable" searches and seizures only. Conversely, **when a search is "reasonable," Section 2, Article III of the Constitution does *not* apply.** As to what qualifies as a reasonable search, the pronouncements of the U.S. Supreme Court, which are doctrinal in this jurisdiction, may shed light on the matter.
Further, Justice John Harlan laid down in his concurring opinion the two-part test that would trigger the application of the Fourth Amendment. *First*, a person exhibited an actual (subjective) expectation of privacy. *Second*, the expectation is one that society is prepared to recognize as reasonable (objective).

The prohibition of unreasonable search and seizure ultimately stems from a person's right to privacy. Hence, only when the State intrudes into a person's expectation of privacy, which society regards as reasonable, is the Fourth Amendment triggered. Conversely, where a person does not have an expectation of privacy or one's expectation of privacy is not reasonable to society, the alleged State intrusion is not a "search" within the protection of the Fourth Amendment.

Concededly, a bus, a hotel and beach resort, and a shopping mall are all private property whose owners have every right to exclude anyone from entering. At the same time, however, because these private premises are accessible to the public, the State, much like the owner, can impose non-intrusive security measures and filter those going in. The only difference in the imposition of security measures by an owner and the State is, the former emanates from the attributes of ownership under Article 429 of the Civil Code, while the latter stems from the exercise of police power for the promotion of public safety. Necessarily, a person's expectation of privacy is diminished whenever he or she enters private premises that are accessible to the public.

In view of the foregoing, the bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy. Further, SCAA Buco merely lifted petitioner's bag. This visual and minimally intrusive inspection was even less than the standard x-ray and physical inspections done at the airport and seaport terminals where passengers may

further be required to open their bags and luggages. Considering the reasonableness of the bus search, Section 2, Article III of the Constitution finds no application, thereby precluding the necessity for a warrant.

As regards the warrantless inspection of petitioner's bag, the OSG argues that petitioner consented to the search, thereby making the seized items admissible in evidence. Petitioner contends otherwise and insists that his failure to object cannot be construed as an implied waiver.

Petitioner is wrong. In *Asuncion v. Court of Appeals*, the apprehending officers sought the permission of petitioner to search the car, to which the latter agreed. According to the Court, petitioner himself freely gave his consent to the search. In *People v. Montilla*, the Court found the accused to have spontaneously performed affirmative acts of volition by opening the bag without being forced or intimidated to do so, which acts amounted to a clear waiver of his right. In *People v. Omaweng*, the police officers asked the accused if they could see the contents of his bag, to which the accused said "you can see the contents but those are only clothings." The policemen then asked if they could open and see it, and the accused answered "you can see it." The Court held there was a valid consented search.

Similarly in this case, petitioner consented to the baggage inspection done by SCAA Buco. When SCAA Buco asked if he could open petitioner's bag, petitioner answered **"yes, just open it"** based on petitioner's own testimony. This is clear consent by petitioner to the search of the contents of his bag. To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- VICTOR DIAZ VINECARIO; ARNOLD ROBLE and GERLYN WATES, *Appellants*.
G.R. No. 141137, THIRD DIVISION, January 20, 2004, CARPIO-MORALES, *J.*

Searches conducted in checkpoints are valid for as long as they are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists.

In light then of Vinecario, et al.'s speeding away after noticing the checkpoint and even after having been flagged down by police officers, their suspicious and nervous gestures when interrogated on the contents of the backpack which they passed to one another, and the reply of Vinecario, when asked why he and his co-appellants sped away from the checkpoint, that he was a member of the Philippine Army, apparently in an attempt to dissuade the policemen from proceeding with their inspection, there existed probable cause to justify a reasonable belief on the part of the law enforcers that Vinecario, et al. were offenders of the law or that the contents of the backpack were instruments of some offense.

FACTS:

During one of the nights of the COMELEC gun ban, one of the 15 police officers manning a checkpoint at Davao City blew his whistle and ordered the return of a motorcycle which sped past them. Obliging, the three men onboard returned. When asked why they sped away, Vinecario retorted that he is a member of the army, although he could not produce any ID to prove the same. At this point, the police officers noticed a big military backpack carried by Vinecario who was observed, as were his co-appellants, to be afraid and acting suspiciously. After being asked what the contents of the bag are, Vinecario answered that it contained a mat and proceeded to pass it to Wates, who in turn, passed it to Roble, who, however, returned it to Vinecario. Suspecting that it contained a bomb, SPO1 Goc-ong instructed his men to disperse and he ordered Vinecario to open the bag. Upon seeing something wrapped in paper inside, SPO1 Goc-ong touched it, while Vinecario grabbed the same, resulting to the tearing of the paper and the smell of marijuana wafting in the air. After finding that the bag contains marijuana, Robie, Wates, and Vinecario were arrested.

ISSUE:

Whether the warrantless search and arrest were valid. (YES)

RULING:

For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search.

In light then of Vinecario, et al.'s speeding away after noticing the checkpoint and even after having been flagged down by police officers, their suspicious and nervous gestures when interrogated on the contents of the backpack which they passed to one another, and the reply of Vinecario, when asked why he and his co-appellants sped away from the checkpoint, that he was a member of the Philippine Army, apparently in an attempt to dissuade the policemen from proceeding with their inspection, there existed probable cause to justify a reasonable belief on the part of the law enforcers that Vinecario, et al. were offenders of the law or that the contents of the backpack were instruments of some offense.

RODOLFO ABENES Y GACUTAN, *Petitioner, vs*. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 156320, THIRD DIVISION, February 14, 2007, AUSTRIA-MARTINEZ, *J.*

Checkpoints which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists are allowed. For, admittedly, routine checkpoints do intrude, to a certain extent, on motorists' right to "free passage without interruption," but it cannot be denied that it involves only a brief detention of travelers during which the vehicle's occupants are required to answer a brief question or two.

FACTS:

Three days prior to the 1998 national and local elections, a red Tamaraw FX trying to pass through a COMELEC gun ban checkpoint was stopped by a Pagadian City team of policemen. As the occupants within the vehicle could not be seen through its tinted windows, one of the police knocked on the vehicle's window and requested the occupants to step down for a routine inspection. The eight occupants, which included Rodolfo Abenes who is the barangay chairman of Zamboanga del Sur,

alighted from the vehicle, and at this juncture, a holstered firearm was noticed tucked at his right waist. Abenes could not show any documents purporting to support his possession of a firearm.

ISSUE:

Whether or not the checkpoint was validly established.

RULING:

Yes. The checkpoint was validly established.

The checkpoint was in pursuance of the gun ban enforced by the COMELEC. The COMELEC would be hard put to implement the ban if its deputized agents were limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during said period would know that they only need a car to be able to easily perpetrate their malicious designs. The facts adduced do not constitute a ground for a violation of the constitutional rights of the accused against illegal search and seizure. PO3 Suba admitted that they were merely stopping cars they deemed suspicious, such as those whose windows are heavily tinted just to see if the passengers thereof were carrying guns. At best, they would merely direct their flashlights inside the cars they would stop, without opening the car's doors or subjecting its passengers to a body search. There is nothing discriminatory in this as this is what the situation demands.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, vs. HADJI SOCOR CADIDIA. ACCUSED-*Appellant*.
G.R. No. 191263, SECOND DIVISION, October 16, 2013, PEREZ, *J.*

Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures.

FACTS:

A non-uniformed personnel of the PNP assigned at the Manila Domestic Airport Terminal 1 frisked Hadji Cadidia upon her entry at the departure area. The female frisker noticed something unusual and thick in the area of Cadidia's buttocks and upon inquiry, Cadidia answered that it was only her sanitary napkin. When she ordered Cadidia to remove her underwear in the female comfort room, the same was discovered to contain two sachets of *shabu*. When asked about the items, Cadidia stated that it does not belong to her and she was only asked to bring the same by an unidentified person.

ISSUE:

Whether or not airport frisking is an authorized form of search and seizure.

RULING:

Yes. Airport frisking is an authorized form of search and seizure.

With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to hoard an aircraft routinely pass through metal detectors:

their carry-on baggages, as well as checked luggage, are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity or the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, vs. ROLANDO ARANETA Y ABELLA @ BOTONG AND MARILOU SANTOS Y TANTAY @ MALOU, *Accused-Appellants*. G.R. No. 191064, SECOND DIVISION, October 20, 2010, MENDOZA, *J.*

The "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.

FACTS:

Pursuant to a confidential informant's tip, a team of Pasig policemen were dispatched to conduct a buy-bust operation to verify the alleged peddling of illegal drugs of live-in couple Rolando Araneta and Marilou Santos. PO2 Danilo Damasco, as the poseur-buyer, and the informant went into the appellants' house for introductions and the supposed buying of the illegal drugs. Afterwards, the marked money was given to Araneta while PO2 Damasco received a plastic sheet. After examining the item, the poseur-buyer gave the pre-arranged signal to the other members who thereafter rushed to the scene. PO2 Damasco arrested Santos while SPO2 Dante Zigapan arrested Araneta.

ISSUE:

Whether or not Araneta and Santos are guilty of violating the Comprehensive Drugs Act.

RULING:

Yes. Araneta and Santos are guilty of violating the Comprehensive Drugs Act.

The Court looked into the accused's defense of denial and accusations of frame-up, planting of evidence, forcible entry and extortion by the police officers but found them inherently weak. Aside from their bare allegations, the accused had nothing more to show that the apprehending police officers did not properly perform their duties or that they had ill motives against them. They failed to substantiate their argument that they were framed-up for extortion purposes. Absent any convincing countervailing evidence, the presumption is that the members of the buy-bust team

performed their duties in a regular manner. The Court gives full faith and credit to the testimonies of the prosecution witnesses.

Doubtless, the prosecution was able to establish all the necessary elements required in the prosecution for illegal sale of dangerous drugs, namely: 1) the identity of the buyer and seller; 2) the identity of the object of the sale and the consideration; and 3) the delivery of the thing sold upon payment.

ELENITA C. FAJARDO, *Petitioner*, vs. PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 190889, SECOND DIVISION, January 10, 2011, NACHURA, *J.*

Under the plain view doctrine, objects falling in the "plain view" of an officer, who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence. It applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure.

FACTS:

Members of the Provincial Intelligence Special Operations Group (PISOG) were instructed to respond to the complaint of concerned citizens residing in a subdivision in Aklan that armen men drinking liquor at the residence of Elenita Fajardo were indiscriminately firing guns. Upon arrival, PISOG saw several persons run in different directions. The team saw Valerio holding two .45 caliber pistols and firing shots at them before entering Fajardo's house. Fajardo was seen tucking a .45 caliber handgun in the waistband of her shorts as she proceeded to enter and lock her house. No agreement was concluded in the negotiations between the policemen and Fajardo. A few hours afterwards, SPO2 Clemencio Nava, who was posted at the back portion of the house, saw Valerio emerge twice on top of the house and throw something. The discarded objects landed near the wall of Fajardo's house and inside the compound of a neighboring residence. SPO2 Nava, together with other policemen, recovered the objects which turned out to be two receivers of a .45 caliber pistol. A warrant was served on Fajardo the next day and since she and Valerio could not present any documents showing their authority to possess the confiscated firearms, a criminal information was filed against them.

ISSUE:

Whether or not the discovery of the two receivers come within the purview of the plain view doctrine.

RULING:

Yes. The discovery of the two receivers come within the purview of the plain view doctrine.

For the plain view doctrine to apply, the law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he must come inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent.

The seizure of the two receivers of the .45 caliber pistol falls within the purview of the plain view doctrine. First, the presence of SPO2 Nava at the back of the house and of the other law enforcers around the premises was justified by the fact that Fajardo and Valerio were earlier seen holding .45 caliber pistols before they ran inside the structure and sought refuge. The attendant circumstances and the evasive actions of the two when the law enforcers arrived engendered a reasonable ground for the latter to believe that a crime was being committed. There was thus sufficient probable cause for the policemen to cordon off the house as they waited for daybreak to apply for a search warrant. Secondly, from where he was situated, SPO2 Nava clearly saw, on two different instances, Valerio emerge on top of the subject dwelling and throw suspicious objects. Lastly, considering the earlier sighting of Valerio holding a pistol, SPO2 Nava had reasonable ground to believe that the things thrown might be contraband items, or evidence of the offense they were then suspected of committing. Indeed, when subsequently recovered, they turned out to be two receivers of a .45 caliber pistol.

The ensuing recovery of the receivers may have been deliberate; but their initial discovery was indubitably inadvertent. It is not crucial that at initial sighting the seized contraband be identified to be so. The law merely requires that the law enforcer observes that the seized item may be evidence of a crime, contraband, or otherwise subject to seizure. Hence, as correctly declared by the CA, the two receivers were admissible as evidence. The liability for their possession, however, should fall only on Valerio and not on Fajardo.

TERRY *v.* OHIO
392 U.S. 1, June 10, 1968, WARREN, *C. J.*

Where a reasonably prudent officer is warranted in the circumstances of a given case in believing that his safety or that of others is endangered, he may make a reasonable search for weapons of the person believed by him to be armed and dangerous, regardless of whether he has probable cause to arrest that individual for crime or the absolute certainty that the individual is armed.

FACTS:

Cleveland Detective Martin McFadden observed two strangers (Terry and another man, Chilton) proceed alternately back and forth along an identical route, pausing to stare in the same store window, which they did for a total of about 24 times. Each completion of the route was followed by a conference between the two in a corner, at one point of which, they were joined by a third man, Katz, who left swiftly. Suspicious of their activities, McFadden followed and investigated them. Fearing that they might have a gun, the officer approached the three and identified himself as a policeman. The men mumbled something and McFadden, as a response, spun Terry around, patted down his clothing and found in his overcoat pocket, but was unable to remove, a pistol. The officer ordered the three to face the wall with their hands raised. A revolver was found from Chilton's outside overcoat pocket. When the three were taken to the police station, Terry and Chlton were charged with carrying concealed weapons.

ISSUE:

Whether the stop-and-frisk conducted by McFadden was valid.

RULING:

Yes. The stop-and-frisk conducted by McFadden was valid.
Though the police must, whenever practicable, secure a warrant to make a search and seizure, that procedure cannot be followed where swift action based upon on-the-spot observations of the officer on the beat is required. The reasonableness of any particular search and seizure must be assessed in light of the particular circumstances against the standard of whether a man of reasonable caution is warranted in believing that the action taken was appropriate.

The officer here was performing a legitimate function of investigating suspicious conduct when he decided to approach Terry and his companions. An officer justified in believing that an individual whose suspicious behavior he is investigating at close range is armed may, to neutralize the threat of physical harm, take necessary measures to determine whether that person is carrying a weapon. A search for weapons in the absence of probable cause to arrest must be strictly circumscribed by the exigencies of the situation. An officer may make an intrusion short of arrest where he has reasonable apprehension of danger before being possessed of information justifying arrest. The officer's protective seizure of Terry and his companions and the limited search which he made were reasonable, both at their inception and as conducted.
The actions of Terry and his companions were consistent with the officer's hypothesis that they were contemplating a daylight robbery and were armed. The officer's search was confined to what was minimally necessary to determine whether the men were armed, and the intrusion, which was made for the sole purpose of protecting himself and others nearby, was confined to ascertaining the presence of weapons. The revolver seized from petitioner was properly admitted into evidence against him, since the search which led to its seizure was reasonable under the Fourth Amendment.

SUSAN ESQUILLO Y ROMINES, *Petitioner*, vs. PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 182010, THIRD DIVISION, August 25, 2010, CARPIO MORALES, *J.*

What is essential in a stop-and-frisk search is that a genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person who manifests unusual suspicious conduct has weapons or contraband concealed about him.

FACTS:

According to the prosecution, PO1 Cruzin, together with PO2 Angel Aguas conducted surveillance on the activities of an alleged snatcher known only as Ryan. As PO1 Cruzin alighted from the private vehicle that brought them to the target area, he glanced in the direction of petitioner who was standing three meters away and seen placing inside a yellow cigarette case what appeared to be a small heat-sealed transparent plastic sachet containing a white substance. While PO1 Cruz was not sure what the plastic sachet contained, he became suspicious when petitioner started acting strangely as he began to approach her. He introduced himself as a police and inquired about the plastic sachet. Instead of replying, petitioner attempted to flee but was timely restrained. The lower courts found her guilty of illegal possession of shabu and held that the police officers had probable

cause to search petitioner under the "stop-and-frisk" concept, a recognized exception to the general rule prohibiting warrantless searches. To petitioner, such legal principle could only be invoked if there were overt acts constituting unusual conduct that would arouse the suspicion.

ISSUE:

Whether or not the arrest without warrant is legal.

RULING:

Yes. The arrest without warrant is legal.

The circumstances under which petitioner was arrested indeed engender the belief that a search on her was warranted. When PO1 Cruzin saw petitioner placing a plastic sachet containing white crystalline substance into her cigarette case, it was in his plain view. Given his training as a law enforcement officer, it was instinctive on his part to be drawn to curiosity and to approach her. That petitioner reacted by attempting to flee all the more pricked his curiosity. That a search may be conducted by law enforcers only on the strength of a valid search warrant is settled. The same, however, admits of exceptions such as the "stop and frisk" operations. Such practice serves a dual purpose: (1) the general interest of effective crime prevention and detection and (2) the more pressing interest of safety and self-preservation. The questioned act of the police officers constituted a valid "stop-and-frisk" operation. At the time of her arrest, petitioner was exhibiting suspicious behavior and in fact attempted to flee after the police officer had identified himself.

SAMMY MALACAT Y MANDAR, *Petitioner*, vs. COURT OF APPEALS, AND PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 123595, EN BANC, December 12, 1997, DAVIDE, JR., *J.*

While probable cause is not required to conduct a "stop and frisk," mere suspicion or a hunch will not validate a "stop and frisk." A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him.

FACTS:

Rodolfo Yu of the Western Police District testified that he was on foot patrol with three other police officers along Quiapo when they chanced upon two groups of Muslim-looking men posted at opposite sides of the corner of Quezon Boulevard. These men were acting suspiciously with their eyes moving very fast. The police officers approached one group who then fled in different directions. As the policemen gave chase, Yu caught up with and apprehended petitioner. Upon searching petitioner, Yu found a fragmentation grenade tucked inside petitioner's "front waist line." Petitioner and another were then brought to Police Station No. 3 where Yu placed an "X" mark at the bottom of the grenade and thereafter gave it to his commander. Petitioner stated that he went to Quiapo to catch a breath of fresh air but the policemen searched them, but found nothing in their possession. However, he was arrested. The trial court ruled that the warrantless search and seizure of petitioner was akin to a "stop and frisk," where a "warrant and seizure can be effected without necessarily being preceded by an arrest."

ISSUE:

Whether or not the arrest and search of petitioner was valid.

RULING:

No. The arrest and search of petitioner was invalid

The prosecution failed to establish petitioner's guilt with moral certainty. Serious doubt surrounds the story of police officer Yu. He did not identify in court the grenade he allegedly seized. Even granting ex gratia that petitioner was in possession of a grenade, the arrest and search of petitioner were invalid. The general rule as regards arrests, searches and seizures is that a warrant is needed in order to validly effect the same. However, there are exceptions such as the stop and frisk. In this case, there are at least three reasons why the "stop-and-frisk" was invalid: First, the court harbors grave doubts as to Yu's claim that petitioner was a member of the group which attempted to bomb Plaza Miranda two days earlier. This claim is neither supported by any police report or record. Second, there was nothing in petitioner's behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were "moving very fast." Petitioner and his companions were merely standing at the corner and were not creating any commotion or trouble. Third, there was at all no ground, probable or otherwise, to believe that petitioner was armed with a deadly weapon. None was visible to Yu, for as he admitted, the alleged grenade was "discovered" "inside the front waistline" of petitioner, and from all indications as to the distance between Yu and petitioner, any telltale bulge, assuming that petitioner was indeed hiding a grenade, could not have been visible to Yu. The constitutional rights of the accused were violated, and thus he is entitled to an acquittal.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, vs. BINAD SY CHUA, *Accused-Appellant*. G.R. No. 136066-67, FIRST DIVISION, February 04, 2003, YNARES-SANTIAGO, *J.*

In a stop-and-frisk, the police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons.

FACTS:

According to the prosecution, the police officers received a report that the accused was about to deliver drugs that night in a hotel. There was also a report that accused distributes illegal drugs. On the basis of such, a team of operatives was formed. At around 11:45 in the evening, their informer pointed to a car driven by the accused who alighted from such and was carrying a sealed Zest-O juice box. SPO2 Nulud and PO2 Nunag hurriedly accosted him and introduced themselves as police officers. As accused pulled out his wallet, a small transparent plastic bag with a crystalline substance protruded from his right back pocket. SPO2 Nulud subjected him to a body search which yielded 20 pieces of live .22 caliber firearm bullets. When SPO2 Nunag peeked into the contents of the Zest-O box, he saw a crystalline substance so he instantly confiscated the items. The accused vehemently denied the accusation against him and narrated that he was arrested and brought to the police station after the police searched his car without his consent. He was held inside a bathroom while the media was called. In the presence of reporters, Col. Guttierez opened the box and accused was made to hold it while pictures were being taken. He was convicted of Illegal Possession of Ammunitions and Illegal Possession of *shabu.*

ISSUE:

Whether or not there was a valid stop-and-frisk.

RULING:

No. There was no valid stop-and-frisk.

A stop-and-frisk is the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon or contraband. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons concealed about him. Thus, a search and seizure should precede the arrest for this principle to apply. The foregoing circumstances do not obtain in the case at bar. There was no valid "stop-and-frisk" in the case of accused-appellant. The accused was first arrested before the search and seizure of the alleged illegal items found in his possession. The apprehending police operative failed to make any initial inquiry into his business in the vicinity or the contents of the Zest-O juice box he was carrying. The apprehending police officers only introduced themselves when they already had custody of the accused. Moreover, at the time of his arrest, accused did not exhibit manifest unusual and suspicious conduct reasonable enough to dispense with the procedure outlined by jurisprudence and the law. There was, therefore, no genuine reasonable ground for the immediacy of accused-appellant's arrest. Even if the fact of delivery of the illegal drugs actually occurred, accused-appellant's warrantless arrest and consequent search would still not be deemed a valid "stop-and frisk". For a valid "stop-and-frisk" the search and seizure must precede the arrest, which is not so in this case. Accordingly, before and during that time of the arrest, the arresting officers had no personal knowledge that accused-appellant had just committed, was committing, or was about to commit a crime.

RODEL LUZ Y ONG, *Petitioner*, vs. PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 197788, SECOND DIVISION, February 29, 2012, SERENO, C*J.*

Consent to a search must be shown by clear and convincing evidence. It must be voluntary in order to validate an otherwise illegal search.

FACTS:

PO2 Emmanuel L. Alteza, a traffic enforcer, testified that he saw the accused driving a motorcycle without a helmet which prompted him to flag him down for violating an ordinance. He invited the accused to come inside their sub-station since it they were almost in front of it and while a citation ticket was being issued, he noticed that the accused was uneasy and kept on getting something from his jacket. He told the accused to take out the contents of the pocket. The accused obliged and slowly put out the contents including a container about two to three inches in size. When it was opened, PO2 Alteza saw a cartoon cover and something beneath it. The contents of the container turned out to be four plastic sachets, two of which contained suspected *shabu.* The accused raised the defense of planting of evidence and extortion. Petitioner claims that there was no lawful search and seizure,

because there was no lawful arrest and even assuming there was, he claims that he had never consented to the search. The RTC convicted petitioner of illegal possession of dangerous drugs.

ISSUE:

Whether or not there was a valid consented search.

RULING:

No. There was no valid consented search.

First, there was no valid arrest of petitioner. When he was flagged down for committing a traffic violation, he was not, ipso facto and solely for this reason, arrested. The general procedure in a traffic violation is not the arrest, but the confiscation of the driver's license. At the time that he was waiting for PO3 Alteza to write his citation ticket, petitioner could not be said to have been "under arrest." There was no intention on the part of PO3 Alteza to arrest him. Second, there being no valid arrest, the warrantless search that resulted from it was likewise illegal. There was no consented warrantless search as the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion. While the prosecution claims that petitioner acceded, this alleged accession does not suffice to prove valid and intelligent consent. The RTC found that petitioner was merely "told" to take out the contents of his pocket. Whether consent to the search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether the defendant was in a public or a secluded location; (3) whether the defendant objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence would be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained, and was freely and voluntarily given. In this case, all that was alleged was that petitioner was alone at the police station at three in the morning, accompanied by several police officers. These circumstances weigh heavily against a finding of valid consent to a warrantless search. Petitioner is acquitted.

THE PEOPLE OF THE PHILIPPINES, *Appellee*, vs. JESUS NUEVAS Y GARCIA, REYNALDO DIN Y GONZAGA, AND FERNANDO INOCENCIO Y ABADEOS, *Appellants*.
G.R. No. 170233, SECOND DIVISION, February 22, 2007, TINGA, *J.*

Consent must be established by clear and positive proof. In cases where the Court upheld the validity of the consented search, the police officers expressly asked for the consent of the accused to be searched.

FACTS:

According to the prosecution, PO3 Teofilo Fami accosted Nuevas because he fit the description of the informant who told them that the a certain person will make a delivery illegal drugs. Fami informed Nuevas that they are police officers and asked him where he was going. Nuevas informed him that there were other things in possession of two other persons and later on, he voluntarily pointed to the police officers a plastic bag which contained marijuana dried leaves and bricks wrapped in a blue cloth. He disclosed where the other two persons would make the delivery so they went to it. They

saw Din carrying a light blue plastic bag and when asked, he disclosed that the bag belonged to Nuevas. Fami then took the bag and upon inspection found inside it "marijuana packed in newspaper and wrapped therein." Cabling corroborated Fami's testimony but he said that after he and Fami had introduced themselves as police officers, Din and Inocencio voluntarily handed to Fami the marijuana dried leaves. For his defense, Nuevas said that Fami poked his gun at him and he was told to carry a plastic bag. Inocencio testified that he was at Din's house to sell his fighting cocks when the two men entered and arrested him and Din. The trial court found the three guilty of illegal possession of marijuana. Nuevas withdrew his appeal.

ISSUE:

Whether or not there was a valid consented search.

RULING:

Yes, in Nuevas' case. No, in Din's case.

In Nuevas's case, he indeed voluntarily surrendered the incriminating bag to the police officers. In his desperate attempt to exculpate himself from any criminal liability, Nuevas cooperated with the police, gave them the plastic bag and even revealed his 'associates,' offering himself as an informant. Thus, the Court would have affirmed Nuevas's conviction had he not withdrawn his appeal. In the case of Din, there was no consent. The police officers gave inconsistent testimonies regarding the manner by which they got hold of the bag. While it may not be contrary to human nature for one to be jolted into surrendering something incriminating to authorities, Fami's and Cabling's testimonies do not show that Din was in such a state of mind or condition. There was no mention of any permission made by the police officers to get or search the bag or of any consent given by Din for the officers to search it. It is worthy to note that in cases where the Court upheld the validity of consented search, the police authorities expressly asked, in no uncertain terms, for the consent of the accused to be searched. The consent of the accused was established by clear and positive proof. Neither can Din's silence at the time be construed as an implied acquiescence to the warrantless search. Without the dried marijuana leaves as evidence, Din's conviction cannot be sustained based on the remaining evidence. Inocencio was wrongly convicted of the crime charged. Inocencio's supposed possession of the dried marijuana leaves was sought to be shown through his act of looking into the plastic bag that Din was carrying. Taking a look at an object, more so in this case peeping into a bag while held by another, is not the same as taking possession thereof. Din and Inocencio are acquitted.

HARRY S. STONEHILL, ROBERT P. BROOKS, JOHN J. BROOKS AND KARL BECK, *Petitioners*, vs. HON. JOSE W. DIOKNO, IN HIS CAPACITY AS SECRETARY OF JUSTICE; JOSE LUKBAN IN HIS CAPACITY AS ACTING DIRECTOR, NATIONAL BUREAU OF INVESTIGATION; SPECIAL PROSECUTORS PEDRO D. CENZON, EFREN I. PLANA AND MANUEL VILLAREAL, JR., AND ASST. FISCAL MANASES G. REYES; JUDGE AMADO ROAN, MUNICIPAL COURT OF MANILA; JUDGE ROMAN CANSINO, MUNICIPAL COURT OF MANILA; JUDGE HERMOGENES CALUAG, COURT OF FIRST INSTANCE OF RIZAL-QUEZON CITY BRANCH, AND JUDGE DAMIAN JIMENEZ, MUNICIPAL COURT OF QUEZON CITY, *Respondents*.
G.R. No. L-19550, June 19, 1967, CONCEPCION, C.*J.*

All evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a State.

FACTS:

Upon application of the respondents-prosecutors, the respondents-judges issued on different dates 42 search warrants against petitioners and/or the corporations of which they were officers directed to any peace officer to conduct searches and seizures on the books of accounts, financial records and other documents showing all business transactions as "the subject of the offense which is described in the applications adverted to as "violation of Central Bank Laws, Tariff and Customs Laws, Internal Revenue Code and the Revised Penal Code." The documents and things seized are those found in the offices of the corporations, and those in the residences of petitioners. The petitioners went to the SC alleging that the search warrants are null and void because it contravenes the Constitution. They maintain that the search warrants are in the nature of general warrants and as such, the seizures effected upon the authority thereof are null and void. Relying upon *Moncado v. People's Court (80 Phil. 1),* respondents-prosecutors maintain that, even if the searches and seizures under consideration were unconstitutional, the documents, papers and things seized are admissible in evidence.

ISSUE:

Whether or not the documents and things seized in the residence of petitioners are admissible in evidence.

RULING:

No. The documents and things seized in the residence of petitioners are inadmissible in evidence.

The Constitution requires that no warrant shall issue but upon probable cause, to be determined by the judge in the manner set forth in said provision and that the warrant shall particularly describe the things to be seized. None of these requirements has been complied with in the contested warrants. No specific offense had been alleged in said applications. Moreover, the warrants authorized the search for and seizure of records pertaining to all business transactions of petitioners regardless of whether the transactions were legal or illegal. It is in violation of the constitutional mandate that the things to be seized be particularly described and it also defeats its major objective which is the elimination of general warrants.

The position taken in Moncado must be abandoned. The exclusionary rule was eventually adopted, realizing that this is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. The reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege. Without that rule, the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence as not to permit this Court's high regard as a freedom "implicit in the concept of ordered liberty." The purpose of the exclusionary rule to "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." Indeed, the non-exclusionary rule is contrary, not only to the letter, but also, to the spirit of the constitutional injunction against unreasonable searches and seizures. If the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by

the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law. The search warrants for the search of the residence of the three petitioners are null and void, and the searches and seizures made are illegal.

WORLDWIDE WEB CORPORATION and CHERRYLL L. YU, *Petitioners*, - versus - PEOPLE OF THE PHILIPPINES and PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *Respondents*. G.R. No. 161106, FIRST DIVISION, January 13, 2014, SERENO, *C.J*

Furthermore, the Court also had occasion to rule that the particularity of the description of the place to be searched and the things to be seized is required "wherever and whenever it is feasible." ***A search warrant need not describe the items to be seized in precise and minute detail. The warrant is valid when it enables the police officers to readily identify the properties to be seized and leaves them with no discretion regarding the articles to be seized.*** *A search warrant fulfills the requirement of particularity in the description of the things to be seized when the things described are limited to those that bear a direct relation to the offense for which the warrant is being issued.*

To our mind, PLDT was able to establish the connection between the items to be searched as identified in the warrants and the crime of theft of its telephone services and business. *Prior to the application for the search warrants, Rivera conducted ocular inspection of the premises of petitioners and was then able to confirm that they had "utilized various telecommunications equipment consisting of computers, lines, cables, antennas, modems, or routers, multiplexers, PABX or switching equipment, and support equipment such as software, diskettes, tapes, manuals and other documentary records to support the illegal toll bypass operations."*

FACTS:

Police Chief Inspector Napoleon Villegas of the Regional Intelligence Special Operations Office (RISOO) of the PNP filed applications for warrants before the RTC Quezon City to search the office premises of petitioner Worldwide Web Corporation (WWC), as well as the office premises of petitioner Planet Internet Corporation (Planet Internet). The applications alleged that petitioners were conducting illegal toll bypass operations, which amounted to theft and violation of P.D. No. 401 (Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered Water or Electrical Meters and Other Acts), to the damage and prejudice of the PLDT.

The RTC conducted a hearing on the applications for search warrants. The applicant, and Jose Enrico Rivera (Rivera), and Raymund Gali (Gali) of the Alternative Calling Pattern Detection Division of PLDT testified as witnesses. **During the hearing, the RTC required the identification of the office premises/units to be searched, as well as their floor plans showing the location of particular computers and servers that would be taken.**

The RTC granted the application for three (3) search warrants. Accordingly, the warrants were issued against the office premises of petitioners, authorizing police officers to seize various items, and were implemented on the same day.

Petitioners WWC and Cherryll Yu, and Planet Internet filed their respective motions to quash the search warrants on the ground, among others, that the search warrants were general warrants.

The RTC granted the motions to quash on the ground that the warrants issued were in the nature of general warrants. Thus, the properties seized under the said warrants were ordered released to

petitioners. However, the CA reversed and set aside the RTC Resolutions, and declared the search warrants valid and effective.

ISSUE:

Whether the search warrants are valid and effective. (YES)

RULING:

The requirement of particularity in the description of things to be seized is fulfilled when the items described in the search warrant bear a direct relation to the offense for which the warrant is sought.

A general warrant is defined as "a search or arrest warrant that is not particular as to the person to be arrested or the property to be seized." It is one that allows the "seizure of one thing under a warrant describing another" and gives the officer executing the warrant the discretion over which items to take. Such discretion is abhorrent, as it makes the person, against whom the warrant is issued, vulnerable to abuses. Our Constitution guarantees our right against unreasonable searches and seizures, and safeguards have been put in place to ensure that people and their properties are searched only for the most compelling and lawful reasons.

Furthermore, the Court also had occasion to rule that the particularity of the description of the place to be searched and the things to be seized is required "wherever and whenever it is feasible." **A search warrant need not describe the items to be seized in precise and minute detail. The warrant is valid when it enables the police officers to readily identify the properties to be seized and leaves them with no discretion regarding the articles to be seized.**

In this case, considering that items that looked like "innocuous goods" were being used to pursue an illegal operation that amounts to theft, law enforcement officers would be hard put to secure a search warrant if they were required to pinpoint items with one hundred percent precision.

A search warrant fulfills the requirement of particularity in the description of the things to be seized when the things described are limited to those that bear a direct relation to the offense for which the warrant is being issued.

To our mind, PLDT was able to establish the connection between the items to be searched as identified in the warrants and the crime of theft of its telephone services and business. Prior to the application for the search warrants, Rivera conducted ocular inspection of the premises of petitioners and was then able to confirm that they had "utilized various telecommunications equipment consisting of computers, lines, cables, antennas, modems, or routers, multiplexers, PABX or switching equipment, and support equipment such as software, diskettes, tapes, manuals and other documentary records to support the illegal toll bypass operations."

PEOPLE OF THE PHILIPPINES, *Appellee* - versus - ALEX MANALLO, *Appellant*.
G.R. No. 143704, SECOND DIVISION, March 28, 2003, CALLEJO, SR., *J*

At the hearing of an application for admission to bail filed by any person who is in custody for the commission of an offense punishable by reclusion perpetua to death, the prosecution has the burden of showing that evidence of guilt is strong.

In this case, the appellant filed his motion for bail. There was no specific date and time for the hearing of said motion. And yet, on the same day that the motion was filed, the trial court granted the said motion and fixed the bail bond for the provisional liberty of the appellant in the amount of P50,000.00 ***without any factual basis therefor stated in the order.*** *Even when the public prosecutor prayed for the cancellation of the property bond of the appellant on the ground that the trial court granted his motion for bail* ***without even affording the prosecution a chance to be heard thereon and adduce its evidence in opposition thereto,*** *the trial court held in abeyance resolution thereof and even allowed the appellant to remain free on his bond in the amount of only P50,000.00.* ***Patently, the prosecution was deprived of its right to due process. The presiding judge of the RTC thus exposed his gross ignorance of the law. As a consequence, the appellant jumped bail and managed to elude arrest for six years, to the prejudice of the administration of justice.***

FACTS:

Spouses Romeo Nabor and Liliosa Napay and their nine-year old daughter Rosaldiza Nabor tenanted and lived in a coconut plantation. Rosaldiza helped in the household chores by washing the family's dirty laundry every Saturday at the *barangay* reservoir. In 1989, Romeo engaged the services of Alex Manallo as coconut gatherer.

In the early morning of March 30, 1992, Rosaldiza went to the reservoir to wash her clothes. At around 11:00 a.m., Rosaldiza left the reservoir and trekked the same route in going home. On her way, Alex suddenly appeared naked and grabbed Rosaldiza from behind. He covered her mouth and poked a knife on her neck. Alex dragged her to a grassy portion and pinned her to the ground. She cried and shouted for help. However, when Alex boxed Rosaldiza on her thighs and abdomen, she lost consciousness. When Rosaldiza regained consciousness, she noticed that she was completely naked. She felt weak and tired. Her private parts and body ached all over. She noticed semen in her vagina. Alex dressed up and warned her not to tell her family of the incident, otherwise, he would kill them all. Rosaldiza went home and told her mother, Liliosa, what happened. Rosaldiza, accompanied by her mother, went to the police station and reported the incident.

An Information was then filed with the RTC Legaspi, charging Alex with rape. No bail was recommended for the provisional liberty of Alex. He filed a motion for bail with no specific date and time for the hearing thereof. The Motion was granted, and the Executive Judge fixed his bail bond at P50,000.00. On the same day, Alex posted a property bond which was immediately approved by the court. Alex was forthwith released from detention.

At his arraignment, Alex pleaded not guilty. The prosecution prayed the trial court to cancel the bond of Alex considering that his petition for bail was granted without due hearing. However, the RTC held in abeyance resolution of the motion until after the prosecutor shall have presented its witnesses.

The RTC issued an order that Alex would remain free on his bond until June 22, 1992, the date set for the hearing on his petition for bail. However, Alex failed to attend the trial on said date. The RTC issued an order for his arrest. However, Alex could no longer be found at his address. It was only six years thereafter that he was arrested.

The RTC found Alex guilty beyond reasonable doubt of the crime of rape by using force and intimidation as defined and penalized under Art. 335(1) of the RPC and he is hereby sentenced to suffer the penalty of imprisonment of *Reclusion Perpetua*, to pay complainant P75,000.00 as indemnity, P50,000.00 as moral damages and the costs.

ISSUE:

Whether the grant of bail was proper. (NO)

RULING:

This Court agrees with the RTC that the appellant is guilty of rape under Article 335 of RPC as amended. The use by the appellant of a knife to consummate the crime is a special aggravating circumstance which warrants the imposition of the penalty of *reclusion perpetua* to death. However, considering that the prosecution failed to prove any other aggravating circumstance in the commission of the crime, the trial court correctly imposed the penalty of *reclusion perpetua*conformably with Article 63 of the RPC.

It bears stressing that the appellant was charged with rape punishable by *reclusion perpetua* to death. Section 5, Rule 114 of the 1985 Rules of Criminal Procedure reads:

> SEC. 5. *Burden of proof in Bail application*. — At the hearing of an application for admission to bail filed by any person who is in custody for the commission of an offense punishable by *reclusion perpetua* to death, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearings shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the witness is dead, outside of the Philippines or otherwise unable to testify.

The trial court was mandated, in resolving a motion or petition for bail, to do the following:

1. In all cases, whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 of the Rules of Court, as amended);
2. Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; (Sections 7 and 8, *supra*)
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *supra*). Otherwise, the petition should be denied.

In this case, the appellant filed his motion for bail. There was no specific date and time for the hearing of said motion. And yet, on the same day that the motion was filed, the trial court granted the said motion and fixed the bail bond for the provisional liberty of the appellant in the amount of P50,000.00

without any factual basis therefor stated in the order. Even when the public prosecutor prayed for the cancellation of the property bond of the appellant on the ground that the trial court granted his motion for bail **without even affording the prosecution a chance to be heard thereon and adduce its evidence in opposition thereto,** the trial court held in abeyance resolution thereof and even allowed the appellant to remain free on his bond in the amount of only P50,000.00.

Patently, the prosecution was deprived of its right to due process. The presiding judge of the RTC thus exposed his gross ignorance of the law. As a consequence, the appellant jumped bail and managed to elude arrest for six years, to the prejudice of the administration of justice.

MIGUEL P. PADERANGA, *Petitioner*, - versus - COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 115407, SECOND DIVISION, August 28, 1995, REGALADO, *J.*

As a paramount requisite then, only those persons who have either been arrested, detained, or otherwise deprived of their freedom will ever have occasion to seek the protective mantle extended by the right to bail. The person seeking his provisional release under the auspices of bail need not even wait for a formal complaint or information to be filed against him as it is available to "all persons" where the offense is bailable. This rule is, of course, subject to the condition or limitation that the applicant is in the custody of the law.

In the case of herein petitioner, it may be conceded that he had indeed filed his motion for admission to bail before he was actually and physically placed under arrest. ***He may, however, at that point and in the factual ambience thereof, be considered as being constructively and legally under custody. Thus, in the likewise peculiar circumstances which attended the filing of his bail application with the trial court, for purposes of the hearing thereof he should be deemed to have voluntarily submitted his person to the custody of the law and, necessarily, to the jurisdiction of the trial court which thereafter granted bail as prayed for. The undeniable fact is that petitioner was by then in the constructive custody of the law.***

FACTS:

An Information was filed with the RTC Gingoog City, indicting for multiple murder, eight (8) accused suspects, namely: Felipe Galarion, Manuel Sabit, Cesar Sabit, Julito Ampo, Eddie Torion, John Doe, Peter Doe, and Richard Doe, as the alleged conspirators in the indiscriminate slaying of the spouses Romeo and Juliet Bucag and their son, Romeo, Jr.

Petitioner Miguel Paderanga was belatedly charged in an Amended Information as a co-conspirator in the crime of multiple murder before the RTC Cagayan de Oro City, for the killing of members of the Bucag family in Gingoog City, of which petitioner was the mayor at the time.

A warrant of arrest for petitioner's apprehension was then issued, but before it could be served on the petitioner, he filed a motion for admission to bail with the trial court, which was set for hearing. The trial court proceeded to hear the application for bail.

As petitioner was then confined at the Cagayan Capitol College General Hospital due to "acute costochondritis," his counsel manifested that they were submitting custody over the person of their client to the local chapter president of the IBP and that, for purposes of said hearing on his bail application, he be considered as being in the custody of the law.

Prosecutor Abejo, on the other hand, informed the trial court that in accordance with the directive of the chief of their office, Regional State Prosecutor Jesus Zozobrado, the prosecution was neither supporting nor opposing the application for bail and that they were submitting the same to the sound discretion of the trial judge.

The RTC admitted petitioner to bail in the amount of P200,000.00. The following day, petitioner, apparently still weak but well enough to travel by then, managed to personally appear before the clerk of court of the trial court and posted bail in the amount thus fixed. He was thereafter arraigned and, in the trial that ensued, he also personally appeared and attended all the scheduled court hearings of the case.

More than 6 months later, Prosecutor Gingoyon elevated the matter to the CA. The CA observed that at the time of petitioner's application for bail, he was not yet "in the custody of the law," apparently because he filed his motion for admission to bail before he was actually arrested or had voluntarily surrendered. Lastly, the prosecution, according to the CA, was not afforded an opportunity to oppose petitioner's application for bail contrary to the requirements of due process. Hence, this appeal.

ISSUE:

Whether the grant of bail was proper. (YES)

RULING:

Section 1 of Rule 114, as amended, defines bail as the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearing before any court as required under the conditions specified in said Rule. Its main purpose, then, is to relieve an accused from the rigors of imprisonment until his conviction and yet secure his appearance at the trial. As bail is intended to obtain or secure one's provisional liberty, the same cannot be posted before custody over him has been acquired by the judicial authorities, either by his lawful arrest or voluntary surrender. As this Court has put it in a case, "it would be incongruous to grant bail to one who is free."

As a paramount requisite then, only those persons who have either been arrested, detained, or otherwise deprived of their freedom will ever have occasion to seek the protective mantle extended by the right to bail. The person seeking his provisional release under the auspices of bail need not even wait for a formal complaint or information to be filed against him as it is available to "all persons" where the offense is bailable. This rule is, of course, subject to the condition or limitation that the applicant is *in the custody of the law*.

On the other hand, a person is considered to be in the custody of the law (a) when he is arrested either by virtue of a warrant of arrest issued pursuant to Section 6, Rule 112, or by warrantless arrest under Section 5, Rule 113 in relation to Section 7, Rule 112 of the revised Rules on Criminal Procedure, or (b) when he has voluntarily submitted himself to the jurisdiction of the court by surrendering to the proper authorities.

In the case of herein petitioner, it may be conceded that he had indeed filed his motion for admission to bail before he was actually and physically placed under arrest. **He may, however, at that point and in the factual ambience thereof, be considered as being constructively and legally under**

custody. Thus, in the likewise peculiar circumstances which attended the filing of his bail application with the trial court, for purposes of the hearing thereof he should be deemed to have voluntarily submitted his person to the custody of the law and, necessarily, to the jurisdiction of the trial court which thereafter granted bail as prayed for. In fact, an arrest is made either by an actual restraint of the arrestee or merely *by his submission to the custody* of the person making the arrest.

The undeniable fact is that petitioner was by then in the constructive custody of the law. Apparently, both the trial court and the prosecutors agreed on that point since they never attempted to have him physically restrained. Through his lawyers, he expressly submitted to physical and legal control over his person, firstly, by filing the application for bail with the trial court; secondly, by furnishing true information of his actual whereabouts; and, more importantly, by unequivocally recognizing the jurisdiction of the said court. Moreover, when it came to his knowledge that a warrant for his arrest had been issued, petitioner never made any attempt or evinced any intent to evade the clutches of the law or concealed his whereabouts from the authorities since the day he was charged in court, up to the submission of his application for bail, and until the day of the hearing thereof.

As to the contention that the prosecution was not given the opportunity to present its evidence within a reasonable period of time, **we hold otherwise.** The records indicate that the Regional State Prosecutor's Office duly received its copy of the application for bail on the very same day that it was filed with the trial court. Counted from said date up to the day of the hearing, the prosecution had more than one (1) week to muster such evidence as it would have wanted to adduce in that hearing in opposition to the motion. Certainly, under the circumstances, that period was more than reasonable.

ROSALIA DOCENA-CASPE, *Complainant*, - versus - JUDGE ARNULFO O. BUGTAS, Regional Trial Court, Branch II, Borongan, Eastern Samar, *Respondent*.
A.M. No. RTJ-03-1767, FIRST DIVISION, March 28, 2003, YNARES-SANTIAGO, *J.*

Under the present rules, a hearing is required in granting bail whether it is a matter of right or discretion. In Santos v. Ofilada, it was held that the failure to raise or the absence of an objection on the part of the prosecution in an application for bail does not dispense with the requirement of a bail hearing.

It is certainly erroneous for the respondent to rely on the Order of Judge Paterno Alvarez. As a responsible judge, he should have looked into the real and hard facts of the case before him and ascertained personally whether the evidence of guilt is strong. To make things worse, respondent Judge relied on the order despite the fact that the same appears to have been issued by his predecessor Judge also without a hearing and while the accused was at large. ***In addition to the requirement of a mandatory bail hearing, respondent judge should have known the basic rule that the right to bail can only be availed of by a person who is in custody of the law or otherwise deprived of his liberty and it would be premature to file a petition for bail for someone whose freedom has yet to be curtailed.***

FACTS:

The instant administrative case for gross ignorance of the law and incompetence against respondent Judge Arnulfo Bugtas stemmed from a murder case filed against accused Celso Docil and Juan Docil for the death of Lucio Docena.

Complainant Rosalia Docena-Caspe alleged that MTC Judge Gorgonio Alvarez conducted a preliminary investigation on the said murder case, and thereafter issued the corresponding warrants of arrest. No bail was recommended for the two (2) accused who were at large since the commission of the offense.

Complainant further stated that the information for murder was filed with the RTC Borongan, Eastern Samar then presided by Judge Paterno Alvarez. The latter allegedly granted a P60,000.00 bailbond each to both accused **without conducting a hearing, and while the two were at large.** Meanwhile, accused Celso Docil was apprehended.

Subsequently, Provincial Prosecutor Vicente Catudio filed before the RTC Borongan, Eastern Samar, now presided by respondent Judge Arnulfo Bugtas, a motion praying that an *alias* warrant of arrest be issued for the other accused, Juan Docil, and that both accused be denied bail. The said motion was granted.

Accused Celso Docil filed a motion for reconsideration praying that he be allowed to post bail on the grounds that: (1) he is entitled to bail as a matter of right because he is charged with murder allegedly committed at the time when the imposition of the death penalty was suspended by the Constitution; and (2) both the investigating Judge and the First Asst. Prosecutor recommended P60,000.00 bail for his temporary liberty.

The Respondent Judge denied the motion, explaining that notwithstanding the suspension of the imposition of the death penalty at the time the accused committed the offense, bail for the crime of murder remains to be a matter of discretion. The Respondent Judge added that there is nothing in the records which show that bail was recommended for his temporary liberty.

Accused Celso Docil filed a motion for reconsideration. He then filed a manifestation pointing out that on page 49 of the records is an order granting him and his co-accused the recommended bail of P60,000.00.

The Respondent Judge granted the said motion for reconsideration **on the basis of a previous order granting bail to the accused.** He ratiocinated that on page 49 of the records, there indeed appears a final and executory order **issued by his predecessor, Judge Paterno Alvarez** granting bail of P60,000.00 to the accused. Hence, the inevitable recourse is to grant bail to accused Celso Docil.

The complainant filed the instant administrative case against the respondent Judge for granting bail to accused Celso Docil without conducting a bail hearing.

ISSUE:

Whether the grant of bail was proper. (NO)

RULING:

Under the present rules, a hearing is required in granting bail whether it is a matter of right or discretion. In *Santos v. Ofilada*, it was held that the failure to raise or the absence of an objection on the part of the prosecution in an application for bail does not dispense with the requirement of a bail hearing. This Court has uniformly ruled that even if the prosecution refuses to adduce evidence or

fails to interpose any objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions from which it may infer the strength of the evidence of guilt, or lack of it, against the accused.

Clearly therefore, the respondent Judge cannot seek refuge on the alleged belated objection of the prosecution to the Order issued by his predecessor, Judge Paterno Alvarez, nor on the prosecution's failure to file a comment to the accused's motion for reconsideration of the Order denying the application for bail.

It is certainly erroneous for the respondent to rely on the Order of Judge Paterno Alvarez. As a responsible judge, he should have looked into the real and hard facts of the case before him and ascertained personally whether the evidence of guilt is strong. To make things worse, respondent Judge relied on the order despite the fact that the same appears to have been issued by his predecessor Judge also without a hearing and while the accused was at large. **In addition to the requirement of a mandatory bail hearing, respondent judge should have known the basic rule that the right to bail can only be availed of by a person who is in custody of the law or otherwise deprived of his liberty and it would be premature to file a petition for bail for someone whose freedom has yet to be curtailed.**

ATTY. EDWARD SERAPIO, *Petitioner*, - versus - SANDIGANBAYAN (THIRD DIVISION), PEOPLE OF THE PHILIPPINES, and PHILIPPINE NATIONAL POLICE DIRECTOR-GENERAL LEANDRO MENDOZA, *Respondents*.
G.R. No. 148468, EN BANC, January 28, 2003, CALLEJO, SR., *J.*

The arraignment of an accused is not a prerequisite to the conduct of hearings on his petition for bail. A person is allowed to petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender. An accused need not wait for his arraignment before filing a petition for bail. ***In fine, the Sandiganbayan committed a grave abuse of its discretion in ordering the arraignment of petitioner before proceeding with the hearing of his petition for bail.***

FACTS:

The records show that petitioner Edward Serapio was a member of the Board of Trustees and the Legal Counsel of the Erap Muslim Youth Foundation. Petitioner, as trustee of the Foundation, received on its behalf, a donation in the amount of P200 Million from Ilocos Sur Governor Luis "Chavit" Singson. Petitioner then turned over the said amount to the Foundation's Treasurer who later deposited it in the Foundation's account.

Thereafter, Gov. Singson publicly accused then President Joseph Estrada and his cohorts of engaging in several illegal activities, including its operation on the illegal numbers game known as *jueteng*. This triggered the filing with the Office of the Ombudsman of several criminal complaints against Joseph Estrada, Jinggoy Estrada, and petitioner, together with other persons.

The Office of the Ombudsman conducted a preliminary investigation of the complaints and issued a joint resolution recommending that Joseph Estrada, petitioner, and several others be charged with the criminal offense of plunder.

The Ombudsman filed with the Sandiganbayan several Informations against former President Estrada, who earlier had resigned from his post as President. The Ombudsman filed an

Amended Information in said case, charging Estrada and several co-accused, including petitioner, with plunder. No bail was recommended for the provisional release of all the accused, including petitioner.

The Sandiganbayan issued a Resolution finding probable cause to justify the issuance of warrants of arrest for the accused, including petitioner. An Order for the arrest of petitioner was likewise issued. When apprised of said order, petitioner voluntarily surrendered on the same day. Petitioner has since been detained at Camp Crame for said charge.

The Sandiganbayan set the arraignment of the accused, including petitioner. In the meantime, petitioner filed with the Sandiganbayan an Urgent Petition for Bail which was set for hearing.
During the hearing on petitioner's Urgent Petition for Bail, the prosecution moved for the resetting of the arraignment of the accused earlier than the scheduled date for arraignment. However, the Sandiganbayan denied the motion of the prosecution and issued an order declaring that the petition for bail can and should be heard *before* petitioner's arraignment and even *before* the other accused filed their respective petitions for bail.

ISSUE:

Whether the petitioner should first be arraigned before hearings of his petition for bail may be conducted. (NO)

RULING:

Although petitioner had already been arraigned, and a plea of not guilty had been entered by the Sandiganbayan on his behalf, thereby rendering the issue as to whether an arraignment is necessary before the conduct of bail hearings in petitioner's case moot, the Court takes this opportunity to discuss the controlling precepts thereon pursuant to its symbolic function of educating the bench and bar.

The contention of petitioner is well-taken. The arraignment of an accused is not a prerequisite to the conduct of hearings on his petition for bail. A person is allowed to petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender. An accused need not wait for his arraignment before filing a petition for bail.

It is therefore not necessary that an accused be first arraigned before the conduct of hearings on his application for bail. For when bail is a matter of right, an accused may apply for and be granted bail even prior to arraignment. The ruling in *Lavides vs. Court of Appeals* also implies that an application for bail in a case involving an offense punishable by *reclusion perpetua* to death may also be heard even before an accused is arraigned. Further, if the court finds in such case that the accused is entitled to bail because the evidence against him is not strong, he may be granted provisional liberty even prior to arraignment; for in such a situation, bail would be "authorized" under the circumstances. **In fine, the Sandiganbayan committed a grave abuse of its discretion in ordering the arraignment of petitioner before proceeding with the hearing of his petition for bail.**

EDUARDO SAN MIGUEL *Complainant*, - versus - JUDGE BONIFACIO SANZ MACEDA, Presiding Judge, Regional Trial Court, Branch 275, Las Piñas City, *Respondent*.
A.M. No. RTJ-03-1749, THIRD DIVISION, April 3, 2007, AUSTRIA-MARTINEZ, *J.*

Section 4, Rule 114 of the Revised Rules of Criminal Procedure provides that before conviction by the RTC of an offense not punishable by death, reclusion perpetua, or life imprisonment, all persons in custody shall be admitted to bail as a matter of right. Records show that complainant was charged with violation of Section 15, Article III of R.A. No. 6425 which is punishable by prision correccional. Following the provisions of the Constitution and the Revised Rules of Criminal Procedure, ***complainant is entitled to bail as a matter of right.***

FACTS:

Complainant Eduardo San Miguel was arrested for illegal sale, dispensation, distribution, and delivery of .50 grams of *methamphetamine hydrochloride*, punishable by *prision correccional.* Complainant jumped bail. Then Judge Florentino Alumbres issued a bench warrant and canceled his bail bond in the amount of P60,000.00 and fixed a new bail bond in the amount of P120,000.00. Complainant was thereafter arrested.

The state prosecutor filed a Motion to Cancel Recommended Bail on the ground of reasonable belief and indications pointing to the probability that accused is seriously considering flight from prosecution. The Motion was set for hearing, which was opposed by the complainant.

The Respondent Judge granted the Motion. During the hearing, Respondent Judge opted to consider complainant's Opposition as a motion for reconsideration and merely ordered the prosecutor to file a reply thereto.

Complainant comes to this Court alleging that his right to procedural due process was gravely violated when respondent issued an Order without giving him the opportunity to comment on the same. The issuance of the Order shows respondent's gross ignorance of the law as the offense charged is neither a capital offense nor punishable by *reclusion perpetua.* His right to bail is not a mere privilege but a constitutionally guaranteed right that cannot be defeated by any order. Clearly, the intendment of the Order was to deny him of his constitutional right to bail.

Respondent explained that the motion to cancel the prosecutor's recommended bail did not need any hearing because the court could act upon it without prejudicing the rights of the adverse party. When he canceled the bail, the cancellation referred to the P60,000.00, and not the P120,000.00 bail fixed by Judge Alumbres. The right of complainant to be heard in the motion to withdraw bail was never violated nor his right to bail impaired. Complainant could have posted the P120,000.00 bail fixed by Judge Alumbres or could have seasonably moved for the lifting of the warrant, but he did not. Thus, the cancellation was in due course because complainant was already detained for the non-bailable offense of murder three days before the cancellation was ordered.

The Office of the Court Administrator (OCA) recommended that the complainant was correct in saying that the order of respondent denied him his right to bail. Hence, respondent is liable for gross ignorance of the law for having denied complainant's right to bail in a case where bail was a matter of right. Besides, the prosecution's motion was granted two (2) days before the scheduled date of hearing thereby depriving the accused of his right to due process.

ISSUE:

Whether the complainant's right to bail is a matter of right. (YES)

RULING:

The Court agrees with the findings and recommendations of the OCA. Section 13, Article III of the 1987 Constitution provides that all persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

Section 4, Rule 114 of the Revised Rules of Criminal Procedure provides that before conviction by the RTC of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, all persons in custody shall be admitted to bail as a matter of right.

Records show that complainant was charged with violation of Section 15, Article III of R.A. No. 6425 which is punishable by *prision correccional.* Following the provisions of the Constitution and the Revised Rules of Criminal Procedure, **complainant is entitled to bail as a matter of right.**

Respondent's asseveration that the cancellation of the bail without due hearing was justified considering that complainant was already detained for the non-bailable offense of murder three days before the cancellation was ordered, **is misplaced.**

As we opined in *Andres v. Beltran*, it is a misconception that when an accused is charged with the crime of murder, he is not entitled to bail at all or that the crime of murder is non-bailable. The grant of bail to an accused charged with an offense that carries with it the penalty of *reclusion perpetua* is discretionary on the part of the trial court. In other words, accused is still entitled to bail but no longer "as a matter of right." Instead, it is discretionary and calls for a judicial determination that the evidence of guilt is not strong in order to grant bail. The prosecution is accorded ample opportunity to present evidence because by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial discretion is weighed in determining whether the guilt of the accused is strong.

As we held in *Sy Guan v. Amparo*, where bail is a matter of right and prior absconding and forfeiture is not excepted from such right, bail must be allowed irrespective of such circumstance. The **existence of a high degree of probability that the defendant will abscond confers upon the court no greater discretion than to increase the bond** to such an amount as would reasonably tend to assure the presence of the defendant when it is wanted, such amount to be subject, of course, to the other provision that excessive bail shall not be required.

Upon review of the TSN of the hearing, **we find that the prosecutor failed to adduce evidence that there exists a high probability of accused's jumping bail that would warrant the cancellation of the recommended bail bond. Following then the above ratiocination, respondent's only recourse is to fix a higher amount of bail and not cancel the P120,000.00 bail fixed by Judge Alumbres.**

BGEN. JOSE COMENDADOR, et. al., *Petitioners*, - versus - GEN. RENATO S. DE VILLA, CHIEF OF STAFF, AFP, et. al., *Respondents*.

x----------x

B/GEN. DEMETRIO CAMUA, et. al., *Petitioners*, - versus - HON. MIANO C. ASUNCION, Presiding Judge, Branch 104, REGIONAL TRIAL COURT, Q.C., LTC. JACINTO LIGOT PA., *Respondents.*
No. 95020 August 2, 1991
x----------x
G.R. No. 93177, EN BANC, August 2, 1991, CRUZ, *J.*

We find that the right to bail invoked by the private respondents in G.R. Nos. 95020 has traditionally not been recognized and is not available in the military, as an exception to the general rule embodied in the Bill of Rights. *This much was suggested in Arula, where we observed that "the right to a speedy trial is given more emphasis in the military where the right to bail does not exist."*

FACTS:

The petitioners and the private respondents are officers of the Armed Forces of the Philippines facing prosecution for their alleged participation in the failed *coup d'etat*. The charges against them are violation of Articles of War (AW) 67 (Mutiny), AW 96 (Conduct Unbecoming an Officer and a Gentleman), and AW 94 (Various Crimes) in relation to Article 248 of the RPC (Murder).

In G.R. No. 95020, Ltc. Jacinto Ligot applied for bail, but the application was denied by General Court-Martial (GCM) No. 14. He then filed with the RTC a petition for *certiorari* and *mandamus* with prayer for provisional liberty and a writ of preliminary injunction. The RTC Judge Maximiano Asuncion issued an order granting provisional liberty to Ligot.

Ligot filed an urgent omnibus motion to enforce the order for his release and to declare in contempt the commanding officer of the PC/INP Jail for disobeying the said order. He later also complained that Generals De Villa and Aguirre had refused to release him "pending final resolution of the appeal to be taken" to this Court.

After hearing, the RTC reiterated its order for the provisional liberty of Ligot. The RTC set aside and declared null and void the assailed Orders of GCM No. 14, denying bail to petitioner on the mistaken assumption that bail does not apply to military men facing court-martial proceedings on the ground that there is no precedent. The RTC declared that Section 13, Article III of the Constitution granting the right to bail to all persons with the defined exception is applicable and covers all military men facing court-martial proceedings. Respondent GCM No. 14 is directed to conduct proceedings on the applications of bail of the petitioner, intervenors, and which may as well include other persons facing charges before GCM No. 14

ISSUE:

Whether the right to bail is available to the private respondents as part of the military. (NO)

RULING:

We find that the right to bail invoked by the private respondents in G.R. Nos. 95020 has traditionally not been recognized and is not available in the military, as an exception to the general rule embodied in the Bill of Rights. This much was suggested in *Arula*, where we observed that "the right to a speedy trial is given more emphasis in the military where the right to bail does not exist."

The argument that denial from the military of the right to bail would violate the equal protection clause is not acceptable. This guaranty requires equal treatment only of persons or things similarly situated and does not apply where the subject of the treatment is substantially different from others. The accused officers can complain if they are denied bail and other members of the military are not. **But they cannot say they have been discriminated against because they are not allowed the same right that is extended to civilians.**

Chief State Prosecutor JOVENCITO R. ZUÑO, *complainant*, - versus - Judge ALEJANDRINO C. CABEBE, Regional Trial Court, Branch 18, Batac, Ilocos Norte, *respondent*.
A.M. OCA No. 03-1800-RTJ, THIRD DIVISION, November 26, 2004, SANDOVAL-GUTIERREZ, *J.*

Under the present Rules, a hearing is mandatory in granting bail whether it is a matter of right or discretion. It must be stressed that the grant or the denial of bail in cases where bail is a matter of discretion, hinges on the issue of whether or not the evidence of guilt of the accused is strong, and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the latter to properly exercise his discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong. In fact, even in cases where there is no petition for bail, a hearing should still be held.

Respondent judge did not follow the above Rules and procedure enumerated in Cortes. He did not conduct a hearing before he granted bail to the accused, thus depriving the prosecution of an opportunity to interpose objections to the grant of bail.

FACTS:

The instant administrative case stemmed from the sworn complaint of Chief State Prosecutor Jovencito Zuño of the DOJ against Judge Alejandrino Cabebe, then Presiding Judge of RTC Batac, Ilocos Norte. The charges are knowingly rendering an unjust judgment, gross ignorance of the law and partiality.

In his complaint, Chief State Prosecutor Zuño alleged that Criminal Case No. 3950-18 for illegal possession of prohibited or regulated drugs was filed with the RTC Batac, Ilocos Norte against Rey Daquep Arcangel, Victorino Gamet Malabed, William Roxas Villanueva, all police officers, Jocelyn Malabed Manuel, and Pelagio Valencia Manuel. Upon arraignment, all the accused, pleaded not guilty.

The accused filed a motion to dismiss invoking as ground the right of the accused to a speedy trial. Respondent judge *motu propio* issued an Order granting bail to the accused, fixing the bail for each at P70,000.00 in cash or property bond at P120,000.00, except for accused Evelyn Manuel whose bail was fixed at P20,000.00 in cash. Respondent judge issued the Order without the accused's application or motion for bail.

Deputy Court Administrator Jose Perez found respondent judge liable for gross ignorance of the law and recommended that a fine of P20,000.00 be imposed upon him, with a stern warning that a repetition of the same or similar offense will be dealt with more severely.

ISSUE:

Whether the grant of bail was proper. (NO)

RULING:

Under the present Rules, a hearing is mandatory in granting bail whether it is a matter of right or discretion. It must be stressed that the grant or the denial of bail in cases where bail is a matter of discretion, hinges on the issue of whether or not the evidence of guilt of the accused is strong, and the determination of whether or not the evidence is strong is a matter of judicial discretion which remains with the judge. In order for the latter to properly exercise his discretion, he must first conduct a hearing to determine whether the evidence of guilt is strong. In fact, even in cases where there is no petition for bail, a hearing should still be held.

In *Cortes vs. Catral*, we laid down the following rules outlining the duties of the judge in case an application for bail is filed:

1. In *all* cases whether bail is a matter of right or discretion, *notify the prosecutor* of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 of the Revised Rules of Criminal Procedure);
2. Where bail is a matter of discretion, *conduct a hearing* of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion (Section 7 and 8, *id.*);
3. Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
4. If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, *id.*); otherwise the petition should be denied.

Based on the above-cited procedure, after the hearing, the court's order granting or refusing bail must contain a summary of the evidence of the prosecution and based thereon, the judge should formulate his own conclusion as to whether the evidence so presented is strong enough to indicate the guilt of the accused.

Respondent judge did not follow the above Rules and procedure enumerated in *Cortes*. He did not conduct a hearing before he granted bail to the accused, thus depriving the prosecution of an opportunity to interpose objections to the grant of bail.

In *Santos vs. Ofilada*, we held that the failure to raise or the absence of an objection on the part of the prosecution in an application for bail does not dispense with the requirement of a bail hearing. **Clearly, therefore, respondent judge cannot seek refuge on the alleged absence of objection on the part of the prosecution to the grant of bail to the accused. We thus find respondent judge guilty of violation of Supreme Court Rules, specifically Rule 114 of the Revised Rules of Criminal Procedure on the grant of bail.**

JOSE ANTONIO LEVISTE, *Petitioner*, - versus - THE COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 189122, THIRD DIVISION, March 17, 2010, CORONA, *J.*

On the other hand, if the appellant's case falls within the second scenario, the appellate court's stringent discretion requires that the exercise thereof be primarily focused on the determination of the proof of the presence of any of the circumstances that are prejudicial to the allowance of bail. This is so because the existence of any of those circumstances is by itself sufficient to deny or revoke bail. ***Nonetheless, a***

finding that none of the said circumstances is present will not automatically result in the grant of bail. Such finding will simply authorize the court to use the less stringent sound discretion approach.

Petitioner disregards the fine yet substantial distinction between the two different situations that are governed by the third paragraph of Section 5, Rule 114. *Instead, petitioner insists on a simplistic treatment that unduly dilutes the import of the said provision and trivializes the established policy governing the grant of bail pending appeal.*

Moreover, to limit the bail-negating circumstances to the five situations mentioned in the third paragraph of Section 5, Rule 114 is wrong. The provision categorically refers to "the following ***or other similar circumstances.****" Hence, under the rules, similarly relevant situations other than those listed in the third paragraph of Section 5, Rule 114 may be considered in the allowance, denial or revocation of bail pending appeal. As a matter of fact, the Court declared in Yap v. Court of Appeals (promulgated in 2001 when the present rules were already effective), that* ***denial of bail pending appeal*** *is* ***"a matter of wise discretion."***

FACTS:

Charged with the murder of Rafael de las Alas, petitioner Jose Antonio Leviste was convicted by the RTC Makati for the lesser crime of homicide and sentenced to suffer an indeterminate penalty of six years and one day of *prision mayor* as minimum to 12 years and one day of *reclusion temporal* as maximum.

He appealed his conviction to the CA. Pending appeal, he filed an urgent application for admission to bail pending appeal, citing his advanced age and health condition, and claiming the absence of any risk or possibility of flight on his part.

The CA denied petitioner's application for bail. It invoked the bedrock principle in the matter of bail pending appeal, that the discretion to extend bail during the course of appeal should be exercised "with grave caution and only for strong reasons." Citing well-established jurisprudence, it ruled that bail is not a sick pass for an ailing or aged detainee or a prisoner needing medical care outside the prison facility. It found that petitioner failed to show that he suffers from ailment of such gravity that his continued confinement during trial will permanently impair his health or put his life in danger. Notably, the physical condition of petitioner does not prevent him from seeking medical attention while confined in prison, though he clearly preferred to be attended by his personal physician.

Petitioner now questions as grave abuse of discretion the denial of his application for bail, considering that none of the conditions justifying denial of bail under the third paragraph of Section 5, Rule 114 of the Rules of Court was present. Petitioner's theory is that, where the penalty imposed by the trial court is more than six years but not more than 20 years and the circumstances mentioned in the third paragraph of Section 5 are absent, bail **must** be granted to an appellant pending appeal.

ISSUE:

Whether the discretionary nature of the grant of bail pending appeal means that bail should automatically be granted absent any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court. (NO)

RULING:

Section 5, Rule 114 of the Rules of Court provides:

> Sec. 5. *Bail, when discretionary.* — **Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua,* or life imprisonment, admission to bail is discretionary.** The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.
>
> x x x
>
> **If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:**
>
> > **(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;**
> > **(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without a valid justification;**
> > **(c) That he committed the offense while under probation, parole, or conditional pardon;**
> > **(d) That the circumstances of his case indicate the probability of flight if released on bail; or**
> > **(e) That there is undue risk that he may commit another crime during the pendency of the appeal. x x x**

Petitioner claims that, in the absence of any of the circumstances mentioned in the third paragraph of Section 5, Rule 114 of the Rules of Court, an application for bail by an appellant sentenced by the Regional Trial Court to a penalty of more than six years' imprisonment should automatically be granted. **Petitioner's stance is contrary to fundamental considerations of procedural and substantive rules.**

Under the present revised Rule 114, the availability of bail to an accused may be summarized in the following rules:

> Bail is either a matter of right or of discretion. It is a matter of right when the offense charged is not punishable by death, *reclusion perpetua* or life imprisonment. On the other hand, upon conviction by the RTC of an offense not punishable death, *reclusion perpetua* or life imprisonment, bail becomes a matter of discretion.
>
> Similarly, **if the court imposed a penalty of imprisonment exceeding six (6) years then bail is a matter of discretion, *except when any of the enumerated circumstances under paragraph 3 of Section 5, Rule 114 is present then bail shall be denied.***

In the first situation, bail is a matter of sound judicial discretion. This means that, if none of the circumstances mentioned in the third paragraph of Section 5, Rule 114 is present, the appellate court has the discretion to grant or deny bail. An application for bail pending appeal may be denied even if the bail-negating circumstances in the third paragraph of Section 5, Rule 114 are absent. In other words, the appellate court's denial of bail pending appeal where none of the said circumstances exists does not, by and of itself, constitute abuse of discretion.

On the other hand, in the second situation, the appellate court exercises a more stringent discretion, that is, to carefully ascertain whether any of the enumerated circumstances in fact exists. If it so determines, it has no other option except to deny or revoke bail pending appeal. Conversely, if the appellate court grants bail pending appeal, grave abuse of discretion will thereby be committed.

Given these two distinct scenarios, therefore, any application for bail pending appeal should be viewed from the perspective of two stages: (1) the determination of discretion stage; where the appellate court must determine whether any of the circumstances in the third paragraph of Section 5, Rule 114 is present; this will establish whether or not the appellate court will exercise sound discretion or stringent discretion in resolving the application for bail pending appeal and (2) the exercise of discretion stage where, assuming the appellant's case falls within the first scenario allowing the exercise of sound discretion, the appellate court may consider all relevant circumstances, other than those mentioned in the third paragraph of Section 5, Rule 114, including the demands of equity and justice; on the basis thereof, it may either allow or disallow bail.

On the other hand, if the appellant's case falls within the second scenario, the appellate court's stringent discretion requires that the exercise thereof be primarily focused on the determination of the proof of the presence of any of the circumstances that are prejudicial to the allowance of bail. This is so because the existence of any of those circumstances is by itself sufficient to deny or revoke bail. **Nonetheless, a finding that none of the said circumstances is present will not automatically result in the grant of bail. Such finding will simply authorize the court to use the less stringent sound discretion approach.**

Petitioner disregards the fine yet substantial distinction between the two different situations that are governed by the third paragraph of Section 5, Rule 114. Instead, petitioner insists on a simplistic treatment that unduly dilutes the import of the said provision and trivializes the established policy governing the grant of bail pending appeal.

Moreover, to limit the bail-negating circumstances to the five situations mentioned in the third paragraph of Section 5, Rule 114 is wrong. The provision categorically refers to "the following **or other similar circumstances.**" Hence, under the rules, similarly relevant situations other than those listed in the third paragraph of Section 5, Rule 114 may be considered in the allowance, denial or revocation of bail pending appeal. As a matter of fact, the Court declared in *Yap v. Court of Appeals* (promulgated in 2001 when the present rules were already effective), that **denial of bail pending appeal** is **"a matter of wise discretion."**

JOSELITO V. NARCISO, *Petitioner*, - versus - FLOR MARIE STA. ROMANA-CRUZ, *Respondent*. G.R. No. 134504, THIRD DIVISION, March 17, 2000, PANGANIBAN, *J.*

We agree with the CA. *The CA ruled that there was no basis for such finding, since no hearing had been conducted on the application for bail — summary or otherwise. The CA found that only 10 minutes had*

elapsed between the filing of the Motion by the accused, and the Order granting bail, a lapse of time that could not be deemed sufficient for the trial court to receive and evaluate any evidence.

Jurisprudence is replete with decisions compelling judges to conduct the required hearings in bail applications, in which the accused stands charged with a capital offense. The absence of objection from the prosecution is never a basis for the grant of bail in such cases, for the judge has no right to presume that the prosecutor knows what he is doing on account of familiarity with the case. *Said reasoning is tantamount to ceding to the prosecutor the duty of exercising judicial discretion to determine whether the guilt of the accused is strong. Judicial discretion is the domain of the judge before whom the petition for provisional liberty will be decided. The mandated duty to exercise discretion has never been reposed upon the prosecutor.*

FACTS:

After conducting a preliminary investigation on the death of Corazon Sta. Romana-Narciso, wife of Joselito Narciso, Asst. City Prosecutor Myrna Dimaranan Vidal of Quezon City recommended and thereafter filed the Information for parricide against Joselito Narciso before the RTC Quezon City.

The accused Narciso filed an Urgent *Ex-Parte* (*Ex Abundanti Cautela*) to Allow Accused Joselito Narciso to Post Bail. **The public prosecutor registered no objection, and said motion was granted on the same day,** allowing accused to post bail at P150,000.00.

The private prosecutor representing private complainant Flor Marie Sta. Romana-Cruz, sister of the accused's deceased wife, filed an Urgent Motion to Lift Order Allowing Accused To Post Bail.

Not obtaining any resolution on the Motion To Lift Order Allowing Accused to Post Bail, private complainant filed a petition before the CA. The CA granted the petition, and the Order granting bail was annulled and set aside.

ISSUE:

Whether the grant of bail was proper. (NO)

RULING:

Section 13, Article III of the Constitution provides: "All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required." Furthermore, Section 7, Article 114 of the Rules of Court, as amended, also provides: "No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution."

Although petitioner was charged with parricide which is punishable with *reclusion perpetua*, he argued before the CA that he was entitled to bail because the evidence of his guilt was not strong. He contended that the prosecutor's conformity to his Motion for Bail was tantamount to a finding that the prosecution evidence against him was not strong.

We agree with the CA. The CA ruled that there was no basis for such finding, since no hearing had been conducted on the application for bail — summary or otherwise. The CA found that only 10 minutes had elapsed between the filing of the Motion by the accused, and the Order granting bail, a lapse of time that could not be deemed sufficient for the trial court to receive and evaluate any evidence.

Stressing in *Basco v*. *Rapatalo* that the judge had the duty to determine whether the evidence of guilt was strong, the Court held that in the application for bail of a person charged with a capital offense punishable by death, *reclusion perpetua* or life imprisonment, *a hearing, whether summary or otherwise in the discretion of the court, must actually be conducted to determine whether or not the evidence of guilt against the accused is strong*. x x x

Jurisprudence is replete with decisions compelling judges to conduct the required hearings in bail applications, in which the accused stands charged with a capital offense. The absence of objection from the prosecution is never a basis for the grant of bail in such cases, for the judge has no right to presume that the prosecutor knows what he is doing on account of familiarity with the case. Said reasoning is tantamount to ceding to the prosecutor the duty of exercising judicial discretion to determine whether the guilt of the accused is strong. Judicial discretion is the domain of the judge before whom the petition for provisional liberty will be decided. The mandated duty to exercise discretion has never been reposed upon the prosecutor.

Imposed in *Baylon v*. *Sison* was this mandatory duty to conduct a hearing despite the prosecution's refusal to adduce evidence in opposition to the application to grant and fix bail. The importance of a hearing has been emphasized in not a few cases wherein the Court ruled that even if the prosecution refuses to adduce evidence or fails to interpose an objection to the motion for bail, it is still *mandatory* for the court to conduct a hearing or ask searching questions from which it may infer the strength of the evidence of guilt, or the lack of it, against the accused.

Additionally, the court's grant or refusal of bail must contain a summary of the evidence for the prosecution, on the basis of which should be formulated the judge's own conclusion on whether such evidence is strong enough to indicate the guilt of the accused. The summary thereof is considered an aspect of procedural due process for both the prosecution and the defense; its absence will invalidate the grant or the denial of the application for bail. **Clearly, the grant of bail by Executive Judge Santiago was laced with grave abuse of discretion, and the CA was correct in reversing him.**

JESSICA GOODMAN, *Complainant*, - versus - JUDGE LORETO D. DE LA VICTORIA, Presiding Judge, Regional Trial Court, Branch 06, Cebu City, *Respondent*.
A.M. No. RTJ-99-1473, FIRST DIVISION, February 16, 2000, PARDO, *J.*

The grant of bail to an accused charged with a capital offense such as murder, which carries with it the penalty of reclusion perpetua to death, is discretionary, not a matter of right. Thus, the judge must first conduct a hearing to determine whether evidence of guilt is strong.

The brief inquiry conducted by respondent judge before granting bail did not constitute the hearing required by law, for such proceeding "did not elicit evidence from the prosecution to guide respondent in the proper determination of the petition." *Respondent judge could not have intelligently assessed the weight of the evidence against accused before granting the application for bail. There were no questions propounded by respondent verifying the strength of the prosecution's evidence.*

In fact, the prosecution was not represented during the hearing. ***Thus, respondent judge failed to comply substantially with the requirement of a hearing in bail applications.***

FACTS:

Assassins gunned down Jerome Goodman, an American national, and struck him with a blunt instrument in Moalboal, Cebu. Before he died, he identified his assailants as Marcelo Abrenica, Mayor of Moalboal, and Mario Dumogho, bodyguard of the mayor. Thereafter, Mayor Abrenica and Adriano Cabantugan presented themselves to the police authorities. Mario Dumogho surrendered himself later.

The Criminal Investigation Command (CIC), after securing the sworn statements of witnesses to the killing, filed with the Office of the Provincial Prosecutor of Cebu the charge sheet for murder against Mayor Abrenica, Adriano Cabantugan, and Mario Dumogho.

Mayor Abrenica and Cabantugan filed with the Office of the Provincial Prosecutor of Cebu a Request for Preliminary Investigation and Waiver of Article 125 of the RPC. They agreed to remain under police custody pending completion of the preliminary investigation.

Thereafter, Mayor Abrenica and co-accused, Adriano Cabantugan, filed with the RTC Cebu an application for bail. The case was re-raffled and assigned to respondent Judge Loreto de la Victoria. The respondent set the petition for bail for hearing. **However, on the day of the hearing, respondent did not allow complainant's counsel, Atty. Cornelio Mercado, to be heard, stating that counsel was "without standing" before the court because he failed to secure the authority of the public prosecutor to appear at the hearing.**

The respondent then granted the application for bail and fixed bail for the temporary liberty of accused mayor at P60,000.00. Respondent likewise reiterated that the notice sent to complainant's counsel did not signify that he had been recognized by the court as possessing legal standing to appear without authority of the public prosecutor.

Complainant alleged that respondent's uncommon bias and patent abuse of authority to strip her counsel of any standing in court deprived her of her day in court. Furthermore, respondent displayed ignorance of the law for failing to comply with the provisions of the Rules of Court, particularly those pertaining to denial or grant of bail, considering the seriousness of the offense charged against the accused.

Respondent Judge denied the charges of abuse of authority and oppressive conduct. Respondent justified his decision to grant bail by citing the failure of the Ombudsman or any of his prosecutors to appear at the hearing for bail to inform the court of any finding of strong evidence of guilt or that murder had been committed, and in consonance with the presumption of innocence. Respondent also alleged that the prosecution filed a comment on the petition for bail, but failed to attend the hearing.

The OCA recommended that respondent judge be ordered to pay a fine of P20,000.00 with stern warning that the commission of a similar offense in the future will be dealt with more severely.

ISSUE:

Whether the grant of bail was proper. (NO)

RULING:

The respondent judge was wrong in refusing to hear complainant's counsel at the hearing of the application for bail. There is no prohibition for counsel of complainant to appear before the court during the hearing for admission to bail of an accused. There is no need of any special authority from the public prosecutor to do so. Moreover, respondent is liable for precipitate haste in granting bail.

The 1985 Rules on Criminal Procedure, as amended, mandates that no person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, when evidence of guilt is strong, shall be admitted to bail regardless of the stage of the criminal prosecution.

The grant of bail to an accused charged with a capital offense such as murder, which carries with it the penalty of *reclusion perpetua* to death, is discretionary, not a matter of right. Thus, the judge must first conduct a hearing to determine whether evidence of guilt is strong.

After hearing, the court's order granting or denying bail must summarize the evidence for the prosecution. On the basis thereof, the judge shall formulate his own conclusion as to whether or not the evidence of guilt is strong. Otherwise, the order granting or denying the application for bail may be arbitrary and hence, invalid.

The brief inquiry conducted by respondent judge before granting bail did not constitute the hearing required by law, for such proceeding "did not elicit evidence from the prosecution to guide respondent in the proper determination of the petition." Respondent judge could not have intelligently assessed the weight of the evidence against accused before granting the application for bail. There were no questions propounded by respondent verifying the strength of the prosecution's evidence. In fact, the prosecution was not represented during the hearing. **Thus, respondent judge failed to comply substantially with the requirement of a hearing in bail applications.**

FLAVIANO B. CORTES, *Complainant*, vs. JUDGE SEGUNDO B. CATRAL, Regional Trial Court, Branch 7, Aparri, Cagayan, *Respondent*.
AM RTJ-97-1387, EN BANC, September 10, 1997, Romero, J

Whether bail is a matter of right or of discretion, reasonable notice of hearing is required *to be given to the prosecutor or fiscal or at least he must be asked for his recommendation because in fixing the amount of bail, the judge is required to take into account the applicant's character and reputation, forfeiture of other bonds or whether he is a fugitive from justice.*
FACTS:

An administrative complaint was filed by Cortes against Judge Catral of the RTC of Aparri, Cagayan for his alleged gross ignorance of the law when he granted bail in two murder cases and reduced the amount of bail recommended by the prosecutor in another case without the required hearing. Judge Catral denied the allegations against him and stated that the reduction of the amount of bail is based on the sound discretion of the court and due to the week evidence provided by the prosecution. He explained that in the murder cases, the fiscal opted not to introduce evidence and recommended bail in the sum of P200,000.00 for each accused instead. As such he approved the said recommendation.

The Office of the Court Administrator recommended the dismissal of the complaint since Cortes failed to show that the acts of Judge Catral of granting and reducing of bail were made in bad faith.

ISSUE:

Whether or not the grant and the reduction of bail was proper. (NO)

RULING:

When a person is charged with an offense punishable by death, *reclusion perpetua* or life imprisonment, bail is a matter of discretion. Consequently, when the accused is charged with an offense punishable by death, *reclusion perpetua* or life imprisonment, **the judge is mandated to conduct a hearing**, whether summary or otherwise in the discretion of the court, not only to take into account the guidelines set forth in Section 9, Rule 114 of the Rules of Court, but primarily to determine the existence of strong evidence of guilt or lack of it, against the accused.

Whether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given to the prosecutor or fiscal or at least he must be asked for his recommendation because in fixing the amount of bail, the judge is required to take into account the applicant's character and reputation, forfeiture of other bonds or whether he is a fugitive from justice.

PEOPLE OF THE PHILIPPINES, *Appellee*, vs. ALFREDO BON, *Appellant*.
G.R. No. 166401, EN BANC, October 30, 2006, TINGA, J.

The sentence of death imposed by the RTC and affirmed by the Court of Appeals can no longer be affirmed in view of ***RA 9346, Section 2 of which mandates that in lieu of the death penalty, the penalty of reclusion perpetua shall be imposed****. Correspondingly, the Court can no longer uphold the death sentences imposed by lower courts, but must, if the guilt of the accused is affirmed, impose instead the penalty of reclusion perpetua, or life imprisonment when appropriate.*

Thus, RA 9346 should be construed as having downgraded those penalties attached to death by reason of the graduated scale under Article 71. Only in that manner will a clear and consistent rule emerge as to the application of penalties for frustrated and attempted felonies, and for accessories and accomplices. In the case of appellant, ***the determination of his penalty for attempted rape shall be reckoned not from two degrees lower than death, but two degrees lower than reclusion perpetua.*** *Hence, the maximum term of his penalty shall no longer be reclusion temporal, as ruled by the Court of Appeals, but instead, prision mayor.*

FACTS:

Eight Informations were filed within the period 21 August 2000 to 23 February 2001 by the Assistant Provincial Prosecutor of Gumaca, Quezon against appellant Bon, charging him with the rape of AAA and BBB, the daughters of his older brother. All these cases were consolidated for trial. The rapes were alleged to have been committed in several instances over a span of six years. Both AAA and BBB testified against appellant, their uncle, and both identified him as the man who had raped them.

The RTC convicted appellant on all eight (8) counts of rape. It further considered the qualifying circumstances of minority of the victims and the relationship of the victims and appellant, the latter being the former's relative by consanguinity within the third degree.

The Court of Appeals downgraded the convictions in Criminal Case Nos. 6906 and 6908 to attempted rape. The sentence was prescribed by the appellate court prior to the enactment of R.A. No. 9346 which ended the imposition of death penalty. The proximate concern as to the appellant is whether his penalty for attempted qualified rape which under the penal law should be two degrees lower than that of consummated rape, should be computed from death or reclusion perpetua.

ISSUE:

Whether or not appellant's penalty for attempted qualified rape, which under the penal law should be two degrees lower than that of consummated qualified rape, should be computed from death or reclusion perpetua. (YES)

RULING:

The sentence of death imposed by the RTC and affirmed by the Court of Appeals can no longer be affirmed in view of **RA 9346, Section 2 of which mandates that in lieu of the death penalty, the penalty of reclusion perpetua shall be imposed**. Correspondingly, the Court can no longer uphold the death sentences imposed by lower courts, but must, if the guilt of the accused is affirmed, impose instead the penalty of reclusion perpetua, or life imprisonment when appropriate.

Upon the other hand, Article 51 of the Revised Penal Code establishes that the penalty to be imposed upon the principals of an attempted felony must be a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

The penalty "lower by two degrees than that prescribed by law" for attempted rape is the prescribed penalty for the consummated rape of a victim duly proven to have been under eighteen years of age and to have been raped by her uncle, is death under Article 266-B of the Revised Penal Code. The determination of the penalty two degrees lower than the death penalty entails the application of Articles 61 and 71 of the Revised Penal Code. Following the scale prescribed in Article 71, the penalty two degrees lower than death is reclusion temporal, which was the maximum penalty imposed by the Court of Appeals on appellant for attempted rape.

Hence, the Court of Appeals sentenced appellant to suffer the penalty for attempted rape, with a maximum penalty within the range of reclusion temporal, and a minimum penalty within the range of the penalty next lower, or prision mayor. If Rep. Act No. 9346 had not been enacted, the Court would have affirmed such sentence without complication. However, the enactment of the law has given rise to the problem concerning the imposable penalty. Appellant was sentenced to a maximum term within reclusion temporal since that is the penalty two degrees lower than death. With the elimination of death as a penalty, does it follow that appellant should now be sentenced to a penalty two degrees lower than reclusion perpetua, the highest remaining penalty with the enactment of Rep. Act No. 9346? If it so followed, appellant would be sentenced to prision mayor in lieu of reclusion temporal.

The consummated felony previously punishable by death would now be punishable by reclusion perpetua. At the same time, the same felony in its frustrated stage would, under the foregoing premise in this section, be penalized one degree lower from death, or also reclusion perpetua. It does

not seem right, of course, that the same penalty of reclusion perpetua would be imposed on both the consummated and frustrated felony.

Thus, RA 9346 should be construed as having downgraded those penalties attached to death by reason of the graduated scale under Article 71. Only in that manner will a clear and consistent rule emerge as to the application of penalties for frustrated and attempted felonies, and for accessories and accomplices. In the case of appellant, **the determination of his penalty for attempted rape shall be reckoned not from two degrees lower than death, but two degrees lower than reclusion perpetua.** Hence, the maximum term of his penalty shall no longer be reclusion temporal, as ruled by the Court of Appeals, but instead, prision mayor.

PEOPLE OF THE PHILIPPINES *v*. SANDIGANBAYAN (Special Division) and JOSE JINGGOY ESTRADA
G.R. No. 158754, EN BANC, August 10, 2007, GARCIA, *J.*

Sec. 13 of Article III of the Constitution mandates that all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. Even if the capital offense charged is bailable owing to the weakness of the evidence of guilt, ***the right to bail may justifiably still be denied if the probability of escape is great****; otherwise, the accused is still entitled to post bail.*

Jinggoy does not seem to be a flight risk*. The likelihood of his escape is nil, given his Senatorial election in 2004. Those who usually jump bail are shadowy characters mindless of their reputation in the eyes of the people for as long as they can flee from the retribution of justice, and those with a reputation and a respectable name to protect and preserve are very unlikely to jump bail.*

FACTS:

Jose Jinggoy Estrada, together with former President Joseph Ejercito Estrada, was charged with plunder under RA No. 7080. He filed a Very Urgent Omnibus Motion alleging that he is entitled to bail as a matter of right. He also filed a motion to resolve his motion to fix ail on grounds that an outgoing mayor loses clout an incumbent has and that on its face, the facts charged in the information do not make out a non-bailable offense as to him. The Sandiganbayan denied the same.

His prayer to post bail was set for hearing. Jinggoy then filed a petition for certiorari before the Court claiming that Sandiganbayan committed grave abuse of discretion in not fixing the bail for him. Pending the petition, he filed with the Sandiganbayan an Urgent Second Motion for Bail for Medical Reasons. Jinggoy also filed an Urgent Motion praying for resolution of his Petition for Bail on Medical/Humanitarian Considerations. The Court referred the motion to the Sandiganbayan for resolution. Sandiganbayan denied Jinggoy's motion for bail for lack of factual basis.

Meanwhile, the Court dismissed his petition for certiorari as the matter requires evidentiary hearing that should be conducted by the Sandiganbayan. Jinggoy filed before the Sandiganbayan an Omnibus Application for Bail and hearings were then conducted. Sandiganbayan (Special Division) granted his application for bail.

ISSUE:

Whether or not Jinggoy is entitled to post bail. (YES)

RULING:

Sec. 13 of Article III of the Constitution mandates that all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. Even if the capital offense charged is bailable owing to the weakness of the evidence of guilt, **the right to bail may justifiably still be denied if the probability of escape is great**; otherwise, the accused is still entitled to post bail.

Jinggoy does not seem to be a flight risk. The likelihood of his escape is nil, given his Senatorial election in 2004. Those who usually jump bail are shadowy characters mindless of their reputation in the eyes of the people for as long as they can flee from the retribution of justice, and those with a reputation and a respectable name to protect and preserve are very unlikely to jump bail.

The Court cannot accept any suggestion that someone who has a popular mandate to serve as Senator is harboring any plan to give up his Senate seat in exchange for becoming a fugitive from justice. The Sandiganbayan is correct when, after conducting numerous bail hearings and evaluating the weight of the prosecution's evidence, it determined that the evidence against Jinggoy for plunder was not strong and granted him bail.

JUAN PONCE ENRILE *v.* SANDIGANBAYAN (THIRD DIVISION), AND PEOPLE OF THE PHILIPPINES
G.R. No. 213847, EN BANC, August 18, 2015, BERSAMIN, J.

Bail *for the provisional liberty of the accused, regardless of the crime charged,* ***should be allowed*** *independently of the merits of the charge, provided his* ***continued incarceration is clearly shown to be injurious to his health or to endanger his life****.*

Enrile's social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely. With his solid reputation in both his public and his private lives, his long years of public service, and history's judgment of him being at stake, he should be granted bail. ***The fragile state of Enrile's health is another justification for his admission to bail. Denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during the trial.***
FACTS:

The Office of the Ombudsman charged Juan Ponce Enrile and others with plunder in the Sandiganbayan for their involvement in the diversion and misuse of appropriations under the Priority Development Assistance Fund (PDAF). Enrile filed his Omnibus Motion and Supplemental Opposition praying that he be allowed to post bail should probable case be found against him. The Sandiganbayan denied his motion on the matter of bail, on the ground of its prematurity considering that Enrile had not yet voluntarily surrendered or been placed under the custody of law. The Sandiganbayan then ordered the arrest of Enrile. On the same day that the warrant of arrest was issued, Enrile voluntarily surrendered. He then filed his Motion for Detention at the PNP General Hospital and his Motion to Fix Bail, arguing that he was not a flight risk, and his age and physical condition must be considered. The Sandiganbayan denied his Motion to Fix Bail.

ISSUE:

Whether or not Enrile is entitled to bail as a matter of right. (YES)

RULING:

The principal purpose of bail is to guarantee the appearance of the accused at the trial or whenever so required by the court. The Philippines' commitment to uphold the fundamental human rights as well as value the dignity of every person has authorized the grant of bail not only to those charged in criminal proceedings but also to extraditees upon a clear and convincing showing: (1) that the detainee will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian and compelling circumstances.

Bail for the provisional liberty of the accused, regardless of the crime charged, **should be allowed** independently of the merits of the charge, provided his **continued incarceration is clearly shown to be injurious to his health or to endanger his life**.

Enrile's social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely. With his solid reputation in both his public and his private lives, his long years of public service, and history's judgment of him being at stake, he should be granted bail. **The fragile state of Enrile's health is another justification for his admission to bail. Denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during the trial.**

REYNALDO C. VILLASEÑOR *v.* HON. MAXIMO ABANO, Judge of the Court of First Instance of Marinduque and THE PROVINCIAL FISCAL OF MARINDUQUE
G.R. No. L-23599, EN BANC, September 29, 1967, SANCHEZ, *J.*

*Courts are to be guided by the purpose of bail, which serves as the **security for the release of a person in the custody of the law**, to appear before any court in which his appearance may be required as stipulated in the bail bond.*

*The inability of a defendant to secure bail in a certain amount by itself does not make the amount excessive. Of importance then is the **possible penalty that may be meted**, which **depends to a great extent upon the gravity of offense**. Villaseñor was charged with a capital offense, which is a complex crime and calls for the imposition of the capital punishment. The Court cannot downgrade the required method of computation, what with a compound of reduced peso value and the aggravated crime climate.*

FACTS:

Reynaldo Villaseñor was charged with murderin the CFI. He was admitted to a P60,000.00-bail. The amount of bond was reduced to P40,000.00, on verbal representation of Villaseñor's wife. Before arraignment on the murder charge, the fiscal amended the information, thus, Villaseñor was now charged with Direct Assault upon an Agent of a Person in Authority with Murder. Judge Abano cancelled Villaseñor's bond and ordered his arrest. In a motion for reconsideration, Judge Abano resolved to admit Villaseñor to post cash bond of P60,000.00. On Villaseñor's motion that the original bond previously given be reinstated, Judge Abano resolved to revert back the cash bond required to property bond.

Villaseñor filed a petition for certiorari with the Court, seeking to reinstate the bail bond previously approved by Judge Abano, as the P60,000.00-bond fixed was excessive, considering that he a mere government employee, earning but a monthly salary of P210.00, and the sole breadwinner of a family of five.

ISSUE:

Whether or not the bail bond fixed by the judge was excessive. (NO)

RULING:

Courts are to be guided by the purpose of bail, which serves as the **security for the release of a person in the custody of the law**, to appear before any court in which his appearance may be required as stipulated in the bail bond.

The amount of bail bond should be high enough to assure the presence of defendant when required but no higher than is reasonably calculated to fulfill this purpose. The good of the public, rights of the accused, the need for a tie to the jurisdiction, and the right to freedom from unnecessary restraint before conviction under the circumstances surrounding each particular accused, should be balanced. In bail fixing, the principal factor considered is the probability of the appearance of the accused, or of his flight to avoid punishment.

The inability of a defendant to secure bail in a certain amount by itself does not make the amount excessive. Of importance then is the **possible penalty that may be meted**, which **depends to a great extent upon the gravity of offense**. Villaseñor was charged with a capital offense, which is a complex crime and calls for the imposition of the capital punishment. The Court cannot downgrade the required method of computation, what with a compound of reduced peso value and the aggravated crime climate.

EDUARDO SAN MIGUEL *v*. JUDGE BONIFACIO SANZ MACEDA, Presiding Judge, Regional Trial Court, Branch 275, Las Piñas City
A.M. No. RTJ-03-1749, THIRD DIVISION, April 4, 2007, AUSTRIA-MARTINEZ, J.

The existence of a high degree of probability that the defendant will abscond confers upon the court no greater discretion than to increase the bond to such an amount as would reasonably tend to ***assure the presence of the defendant when it is wanted****, but* ***excessive bail shall not be required****.*

FACTS:

San Miguel was charged with violation of Section 15, Article III of RA No. 6425 which is punishable by *prision correccional*. He was arrested and jumped bail. Judge Alumbres issued a bench warrant and cancelled his bail bond in the amount of P60,000.00 and fixed a new bail bond in the amount of P120,000.00. The state prosecutor filed a Motion to Cancel Recommended Bail on the ground of reasonable belief and indications pointing to probability that accused is seriously considering flight from prosecution. San Miguel then filed an Opposition to the Motion. Judge Maceda issued an order granting the Motion as a motion for reconsideration of the assailed order granting the withdrawal by the prosecution of the recommended bail. San Miguel then questioned Judge Maceda's issuance of the order as the offense charged is neither a capital offense nor punishable by *reclusion perpetua*, and the

order denied him of his constitutional right to bail. The OCA recommended that a regular administrative matter be filed against Judge Maceda.

ISSUE:

Whether or not Judge Maceda correctly cancelled the recommended bail bond. (NO)

RULING:

Where bail is a matter of right and prior absconding and forfeiture is not excepted from such right, bail must be allowed irrespective of such circumstance. The prosecutor failed to adduce evidence that there exists a high probability of accused's jumping bail that would warrant the cancellation of the recommended bail bond. Judge Maceda's only recourse is to fix a higher amount of bail and not cancel the P120,000 bail fixed by Judge Alumbres.

The existence of a high degree of probability that the defendant will abscond confers upon the court no greater discretion than to increase the bond to such an amount as would reasonably tend to **assure the presence of the defendant when it is wanted**, but **excessive bail shall not be required**.

PEOPLE OF THE PHILIPPINES *v.* ROGELIO REYES GOMEZ a.k.a. PHILIP ROGER LACSON and ROGER ELEAZAR GOMEZ
G.R. Nos. 131946-47, SECOND DIVISION, February 8, 2000, BELOSILLO, *J.*

Where the accused is not given the chance to present rebuttal evidence to disprove that the evidence of his guilt was strong, ***the remedy is to file a petition for certiorari under Rule 65*** *of the Rules of Court.*

FACTS:

Rogelio Gomez was charged with illegal recruitment in large scale resulting in economic sabotage under the Labor Code and eight counts of estafa under the RPC. The RTC convicted him as charged. Gomez now appeals the decision of the RTC arguing that the RTC erred in denying his application for bail after his arraignment. He argues that although his counsel was given the chance to cross-examine the prosecution witnesses at the bail hearings, he was not given the opportunity to submit rebuttal evidence to disprove that the evidence of his guilt was strong.

ISSUE:

Whether or not appeal is the proper remedy when bail is denied. (NO)

RULING:

When the RTC denied his application for bail, Gomez should have filed a petition for *certiorari* before the appellate court. It is also too late for him to question the RTC's decision of denying his application for bail. Besides, his conviction undoubtedly proves that the evidence of guilt against him was strong.

WINSTON MENDOZA and FE MICLAT *v.* FERNANDO ALARMA and FAUSTA ALARMA
G.R. No. 151970, FIRST DIVISION, May 7, 2008, CARPIO, *J.*

The order of execution was issued, not on a judgment, because there was none, but solely on the declaration of forfeiture. An order of forfeiture of the bail bond is ***conditional and interlocutory****, there being something more to be done such as the production of the accused within 30 days. This is also called confiscation of bond.*

FACTS:

Spouses Alarma owned a lot which was posted as a property bond for the provisional liberty of Joselito Mayo, charged with illegal possession of firearms. When the accused failed to appear in court, the trial court ordered his arrest and the confiscation of his bail bond. It directed the bondsmen to produce within 30 days the person of the accused and to show cause why judgment should not be entered against the bail bond. Without judgment being rendered against the bondsmen, the trial court issued a writ of execution against the land which was sold at public auction. Petitioners emerged as the highest bidders. The land was awarded to them and they immediately took possession of the same. Spouses Alarma then filed a complaint for recovery of possession grounded on the nullity of the entire proceedings relating to the property bond. The RTC dismissed the complaint and declared that the order of issuance of writ of execution was a judgment on the bond. The CA reversed the RTC decision. Mendoza and Miclat applied for the registration of the land, which was granted by the RTC. Spouses Alarma filed an action for annulment of title and reconveyance of ownership of the land, but the RTC dismissed the same. The CA reversed the RTC decision.

ISSUE:

Whether or not the CA erred in finding a defect in the proceedings. (NO)

RULING:

The order of execution was issued, not on a judgment, because there was none, but solely on the declaration of forfeiture. An order of forfeiture of the bail bond is **conditional and interlocutory**, there being something more to be done such as the production of the accused within 30 days. This is also called confiscation of bond.

An order of forfeiture is different from a judgment on the bond which is issued if the accused was not produced within the 30-day period. The judgment on the bond is the one that ultimately determines the liability of the surety, and when it becomes final, execution may issue at once. No such judgment was ever issued and neither has an amount been fixed for which the bondsmen may be held liable. The law was not strictly observed and this violated Spouses Alarma's right to procedural due process.

TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E. MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALES, JR., and BEN YU LIM, JR. *v.* MAGDALENO M. PENA and HON. MANUEL Q. LIMSIACO, as Judge Designate of the Municipal Trial Court in Cities, Bago City
G.R. No. 143591, THIRD DIVISION, May 5, 2010, PEREZ, *J.*

The ruling of the Court that ***posting of bail constitutes a waiver of any irregularity in the issuance of a warrant of arrest has already been superseded*** *by Sec. 26, Rule 114 of the Revised Rule of Criminal Procedure. The principle that the accused is precluded from questioning the legality of the arrest after arraignment* ***is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto.***

Petitioners filed their omnibus motion on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest. The posting of bail bond was a matter of imperative necessity to avert their incarceration.

FACTS:

Atty. Magdaleno Pena filed a civil case for recovery of agent's compensation against Urban Bank and petitioners. Petitioners moved to dismiss and presented documents to show that Pena was not appointed by Urban Bank or the petitioners as their agent. Pena filed then a complaint-affidavit claiming that the documents were falsified. The petitioners were charged with four counts of introducing falsified documents. The MTCC judge issued the warrants for their arrest. Petitioners filed an Omnibus Motion to Quash, Recall Warrants and/or for reinvestigation. They argued that they were not afforded the right to submit their counter-affidavit and that the judge merely relied on the complaint-affidavit and attachments of the Pena in issuing the warrants of arrest. The MTCC denied the Omnibus motion andupheld the validity of the warrant of arrest saying that petitioners could no longer question the validity of the warrant since they already posted bail. The petitioners filed a petition for certiorari before the CA, but the same was dismissed. Petitioners filed a petition for review on certiorari before the Court. Pena contended that the issues raised by the petitioners had already become moot and academic when the latter posted bail and were already arraigned.

ISSUE:

Whether or not posting bail is a waiver of the right to assail the validity of the warrants of arrest. (NO)

RULING:

The ruling of the Court that **posting of bail constitutes a waiver of any irregularity in the issuance of a warrant of arrest has already been superseded** by Sec. 26, Rule 114 of the Revised Rule of Criminal Procedure. The principle that the accused is precluded from questioning the legality of the arrest after arraignment **is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto.**

Petitioners filed their omnibus motion on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest. On the date of their arraignment, petitioners refused to enter their plea due to the fact that the issue on the legality of their arrest is still pending with the Court. When the court *a quo* entered a plea of not guilty for them, there was no valid waiver of their right to preclude them from raising the same with the CA or the Court. The posting of bail bond was a matter of imperative necessity to avert their incarceration.

PROSECUTOR IVY A. TEJANO *v.* PRESIDING JUDGE ANTONIO D. MARIGOMEN AND UTILITY WORKER EMELIANO C. CAMAY, JR.,
A.M. No. RTJ-17-2492, EN BANC, September 26, 2017, Leonen, J.

Without a standing warrant of arrest, ***a judge not assigned to the province, city, or municipality where the case is pending has no authority to grant bail****. To do so would be gross ignorance of the law.* ***Judge Marigomen was not a judge in the province, city, or municipality where the case was***

pending. *Neither was Andrino arrested in a province, city, or municipality other than where the case was pending precisely because no warrant of arrest had yet been issued when he posted bail on May 9, 2013. Judge Marigomen violated Rule 114, Section 17(a) and is guilty of gross ignorance of the law.*

FACTS:

Prosecutor Tejano filed a complaint against her husband Andrino for violation of R.A. No. 9262 (Anti-VAWC Law). This case was raffled to Cebu City Judge Saniel. On May 9, 2013 and with no standing warrant of arrest against him, Andrino posted bail before Bogo City (Cebu) Judge Marigomen. In posting bail, Andrino was assisted by Camay, a utility worker in Judge Marigomen's court. On the same day of the posting, Judge Marigomen ordered Andrino's release. Thus, Tejano charged Judge Marigomen of gross ignorance of the law. She alleged that Judge Marigomen violated Rule 114 of the Rules of Court in ordering the release of her husband with no standing warrant of arrest against him. As for Camay, Tejano charged him with violating the Anti-Red Tape Act for allegedly fixing Andrino's bail application. The Office of the Court Administrator (OCA) found Judge Marigomen guilty as charged but dismissed the complaint against Camay.

ISSUE:

Whether or not Judge Marigomen committed gross ignorance of the law in ordering the release of Andrino despite the absence of a warrant of arrest and that the case was not pending before him. (YES)

RULING:

The text of Rule 114, Section 17(a) of the Rules of Court shows that there is an order of preference with respect to where bail may be filed. In the absence or unavailability of the judge where the case is pending, **the accused must first go to a judge *in the province, city, or municipality where the case is pending.*** Furthermore, **a judge of another province, city, or municipality may grant bail *only if* the accused has been *arrested* in a province, city, or municipality other than where the case is pending**.

A judge not assigned to the province, city, or municipality where the case is pending but approves an application for bail filed by an accused not arrested is guilty of gross ignorance of the law. The last sentence of Rule 114, Section 17(a) is clear that for purposes of determining whether or not the accused is in custody of the law, the mode required is arrest, not voluntary surrender, before a judge of another province, city, or municipality may grant a bail application. In the same vein, it is gross ignorance of the law if a judge grants an application for bail in a criminal case outside of his or her jurisdiction without ascertaining the absence or unavailability of the judge of the court where the criminal case is pending.

Judge Marigomen was *not* a judge in the province, city, or municipality where the case was pending. Neither was Andrino *arrested* in a province, city, or municipality other than where the case was pending precisely because no warrant of arrest had yet been issued when he posted bail on May 9, 2013. Judge Marigomen violated Rule 114, Section 17(a) and is guilty of gross ignorance of the law. Moreover, Judge Marigomen did not ascertain the absence or unavailability of Judge Saniel. This duty to ascertain is a consequence of Judge Marigomen not being the judge of the place where the criminal case was pending and could have been satisfied by inquiring and coordinating with the court personnel belonging to Branch 20, where the criminal casewas pending.

Had Judge Marigomen done his duty, Judge Saniel would have already been informed of the grant of bail on May 9, 2013, and therefore, would not have superfluously issued a Warrant of Arrest 21 days later. Presumption of regularity in the performance of official duty cannot be appreciated in favor of Judge Marigomen.

PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus- JASON SY, *Accused-appellant.*
G.R. No. 185284, THIRD DIVISION, June 22, 2009, CHICO-NAZARIO, *J.*

An accused in criminal prosecutions is to be presumed innocent until his guilt is proven beyond reasonable doubt. This constitutional guarantee cannot be overthrown unless the prosecution has established by such quantum of evidence sufficient to overcome this presumption of innocence and prove that a crime was committed and that the accused is guilty thereof. Under our Constitution, an accused enjoys the presumption of innocence. And this presumption prevails over the presumption of regularity of the performance of official duty.

In dealing with prosecutions for the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence. Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug.

In the instant case, the Court finds that the testimonies of the prosecution witnesses adequately establish these elements.

The Court has no reason to doubt the assessment of the trial court regarding the credibility of the prosecution and defense witnesses. The testimony of the buy-bust team established than an entrapment operation against accused-appellant was legitimately and successfully carried out on 3 December 2000, where accused-appellant was caught selling 987.32265 grams of methamphetamine hydrochloride or shabu.

FACTS:

Jason Sy was charged before the RTC of San Fernando, Pampanga, Branch 47, with illegal sale of shabu. The prosecution's versions of the facts are herein summarized by the RTC:
The first witness to testify was PO3 Ricardo L. Amontos. He declared that he was a member of the Special Action Team 3rd CIDG, Camp Olivas, City of San Fernando, Pampanga. At about 4:00 o'clock in the afternoon of December 2, 2000, he reported to Camp Olivas on instructions of their team leader, Major Julian Caesar Mana. The latter told them that PO2 Christian Trambulo, together with a civilian informant, were negotiating a drug-deal with a certain person allegedly named Jason Sy. At around 2:00 o'clock of the next morning, December 3, 2000, Major Mana conducted a briefing regarding a possible buy-bust operation. Those presents (sic) were Major Mana, Captain Julieto Culili and six (6) other police officers. He was designated as back-up of PO2 Trambulo. His duty was to assist in apprehending the suspect. After the briefing, they proceeded to the designated area.
The place was well-lighted. Lights emanated from the Chowking Fast Food and from a spotlight in the building beside the restaurant. Witness narrated further that at around 3:00 o'clock of the said morning, a color red Nissan Altima arrived at the parking lot. A male person, who was later identified as accused Jason Sy, alighted and walked towards the car where PO2 Trambulo was. Jason Sy and

PO2 Trambulo talked for awhile. Then PO2 Trambulo removed his bull cap, which was the pre-arranged signal that the sale has already been consummated. As soon as he saw the signal, he immediately rushed to the place where PO2 Trambulo was standing. At this moment, PO2 Trambulo has already placed Jason Sy under arrest by holding the latter's hand. He recovered the Php5,000.00 marked money and the boodle money from the possession of Jason Sy and apprised him of his constitutional rights. He then turned over possession of the boodle money to PO2 Trambulo. Subsequently, they brought Jason Sy to their office at Camp Olivas. PO2 Trambulo turned over custody of Jason Sy, the buy-bust money and a transparent plastic packed inside of which was a paper bag with the label Jacob Fish cracker, allegedly containing shabu, to the police investigator.
Senior Inspector Maria Luisa Gundran-David, the Crime Laboratory forensic chemical officer, testified that she conducted a qualitative examination of the shabu specimen by weighing it. There was a blue coloration indicating that the sample was positive for shabu. She next conducted a confirmatory test using the TLC method, the results of which confirmed her initial impressions.
The defense sought to establish its "hulidap" theory through the testimonies of the accused-appellant Jason Sy, Henry Ang (helper of acused-appellant), Armando Escala (a taxi driver), Jose Pepito (jeepney driver), Allan Castro (guard at Chowking along Olongapo-Gapan Road), Andrea Co (neighbor of accused-appellant) and Co Kim Eng. The defense presented an entirely different scenario, with the following version of the facts:

Accused (sic) life will change on 2 December 2000. On that day, at dawn, accused was illegally abducted while in his car, stalled in momentary traffic, along EDSA in Caloocan City. A witness, Jose Pepito, saw two (2) persons commandeered (sic) accused's car, forced him to move to the back seat, and sped away with him. Accused was initially brought to a place which looks like a cemetery. While the accused could not name the cemetery, he recalled that it was near a toll gate going to the North Expressway.

At the cemetery, his vehicle was ransacked and his person searched, divesting him and his car of his sample RTW products, cash amounting to ₱4,000.00 to ₱5,000.00 and his cellular phone, among others. Thereafter, he was brought to his house at Polyteach Street, University Hills, Caloocan City, where the place was likewise pillaged by these persons numbering about ten (10) by that time. They took all his stock merchandise or inventory and carted them away to their own vehicles. Fifteen (15) to twenty (20) minutes later they left with the accused in his car, and in two (2) other cars.

He was instructed by his abductors to ask his auntie to raise One Million Five Hundred Thousand (P1.5M) Pesos in ransom. The phone was immediately taken from him after delivering the message. Thereafter, he was blindfolded and they kept on driving, making only a short stop to take lunch.
Before dawn the following day, (3 December 2000), (sic) the accused was taken from his holding cell and brought to an office which he learned only later as inside Camp Olivas in San Fernando, Pampanga. Unknown to him, a case of drug trafficking had been prepared by his abductors (now obviously, police officers) for filing before the prosecutor's office on that day.

RTC rendered its Decision convicting accused-appellant of the crime charged in Criminal Case No. 11379. Agreeing with the factual findings of the trial court, the Court of Appeals gave more weight to the prosecution's claim that the entrapment operation in fact took place at the parking area outside Chowking Restaurant along Olongapo-Gapan road.

ISSUE:

Whether the prosecution discharged its burden to support accused-appellant's guilt beyond reasonable doubt for the crime charged. (YES)

RULING:

After a painstaking review of the records of the case, we find no merit in the appeal.

An accused in criminal prosecutions is to be presumed innocent until his guilt is proven beyond reasonable doubt. This constitutional guarantee cannot be overthrown unless the prosecution has established by such quantum of evidence sufficient to overcome this presumption of innocence and prove that a crime was committed and that the accused is guilty thereof. Under our Constitution, an accused enjoys the presumption of innocence. And this presumption prevails over the presumption of regularity of the performance of official duty.

This Court is not unmindful of the anomalous practices of some law enforcers in drug-related cases such as planting evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. Vigilance and caution in trying drug-related cases must be exercised lest an innocent person be made to suffer the unusually severe penalties for drug offenses. This Court reiterates that the presumption of regularity does not, by itself, constitute proof of guilt beyond reasonable doubt. It cannot, by itself, support a judgment of conviction. Clearly, the prosecution must be able to stand or fall on its evidence, for it cannot simply draw strength from the weakness of the evidence for the accused.

In dealing with prosecutions for the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence. Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug.

In the instant case, the Court finds that the testimonies of the prosecution witnesses adequately establish these elements.

The Court has no reason to doubt the assessment of the trial court regarding the credibility of the prosecution and defense witnesses. The testimony of the buy-bust team established than an entrapment operation against accused-appellant was legitimately and successfully carried out on 3 December 2000, where accused-appellant was caught selling 987.32265 grams of methamphetamine hydrochloride or shabu.
Aware of the findings of the RTC on this matter and its subsequent ruling convicting accused-appellant, a conviction later on affirmed by the Court of Appeals, this Court finds accused-appellant guilty beyond reasonable doubt of the crime charged. The RTC Decision found evidence to support that the police officers exacted money from accused-appellant after his arrest in order to facilitate his immediate discharge. This notwithstanding, we examined the entirety of the prosecution evidence and find the same sufficient to convict accused-appellant.
As shown from the evidence adduced by the prosecution, the sale was actually witnessed and proven by the prosecution witnesses.

The defense casts doubt as to whether the prosecution was able to maintain the chain of custody of the evidence, or the shabu, from the time of its alleged retrieval from him, to the time it was presented in court.

The same has no merit. The integrity of the chain of custody of the evidence was not compromised. This Court has explained in People v. Del Monte that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition sine qua non for conviction for the illegal sale of dangerous drugs. SPO2 Trambulo, the poseur-buyer, testified that upon confiscation of the box with the shabu, he affixed his initials CVT and the date of confiscation of the box. Thereafter, he placed the evidence in his car until they reached the CIDG office, whereupon he showed the same to P/Inspector Culili and the evidence was inventoried as well. Culili then instructed him to bring the evidence to the crime laboratory for examination.

When the duty officer received the evidence at the crime laboratory, Senior Inspector Maria Luisa Gundran-David conducted the laboratory examination.

What is material is the delivery of the prohibited drug to the buyer which, in this case, was sufficiently proved by the prosecution through the testimony of the poseur-buyer and the presentation of the article itself before the court.

As found by the trial court, the testimonies of the defense witnesses have lose ends and are not as plausible as the defense would want to make it appear.

Between the positive identification of accused by Trambulo, who acted as poseur-buyer, and accused-appellant's denial, greater weight must be given to the positive testimony of Trambulo.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- SERGIO LAGARDE, *Accused-Appellant.*
G.R. No. 182549, SECOND DIVISION, January 20, 2009, VELASCO, *J.*

In rape cases, courts are governed by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, only the complainant can testify against the assailant. Accordingly, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.

The trial court observed that AAA's testimony was credible, straightforward, clear, and convincing. She ably identified accused-appellant as her attacker and described in detail how she was sexually assaulted. There is no reason a child would fabricate such a serious accusation such as rape and risk public humiliation if not to seek justice. It is for this reason that testimonies of child-victims are normally given full weight and credence, since when minors say they were raped, they say in effect all that is necessary to show that rape was committed. Accused-appellant, on the other hand, could only offer denial and alibi as defenses.

FACTS:

Accused-appellant was charged with rape in an information dated March 1, 2002. During trial, the prosecution presented the victim, AAA, and Drs. Felix P. Oyzon and Karen Palencia-Jadloc as witnesses. According to the prosecution, on December 27, 2001, around 12 noon, AAA and her mother were at the house of Lolita Lagarde-Sarsosa, which was about 500 to 600 meters away from the victim's house, to attend the death anniversary celebration of Lolita's mother. Accused-appellant was also present in that occasion, being the nephew of Lolita. Accused-appellant is a neighbor of AAA and the father of her classmate.

After lunch, AAA's mother, accused-appellant, and the other visitors started drinking tuba (coconut wine). AAA remained inside the house until her mother ordered her to pick a jackfruit at around 4:00 p.m. AAA obliged and went outside towards the jackfruit tree which was about 150 meters away from the house. When she was near the tree, she sensed the presence of somebody behind her who suddenly placed his hand over her mouth and dragged her to the loonan or copra dryer which was about eight meters away from the jackfruit tree. There, AAA recognized the attacker as accused-appellant.

In the copra dryer, accused-appellant undressed AAA while keeping one of his hands on her mouth. He then took off his clothes and told AAA to lie on the *papag* or bamboo bench. Accused-appellant then mounted AAA, poked a seven-inch knife on her face, and told her to be silent. Thereafter, he inserted his penis into her vagina and made a pumping motion, which hurt AAA's chest and vagina. After the sexual assault, accused-appellant stood up, put on his shirt and pants, and then left the place. Not long after, AAA dressed herself up, and returned to the house and told her ordeal to her mother. AAA and her mother subsequently reported the incident to the officials of Barangay Lukay, San Miguel, Leyte. Accused-appellant was immediately arrested.

Accused-appellant denied raping AAA. He testified that on the day the alleged offense occurred, he never left the house of Lolita from the time he arrived at 12 noon until he went home at about 9:00 p.m. He admitted having a drinking spree with other visitors, but disclaimed never talking to AAA who left with her mother at 4:30 p.m. He stated that there was no *loonan* or copra/kiln dryer near the house of Lolita.

The trial court convicted accused-appellant of rape aggravated by minority of the victim, use of bladed weapon and force, and uninhabited place in view of the location of the offense. The appellate court upheld the trial court's findings of fact and judgment of conviction.

ISSUE:

Whether the court a quo gravely erred in finding that the guilt of the accused-appellant for the crime charged has been proven beyond reasonable doubt. (NO)

RULING:

In rape cases, courts are governed by the following principles: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) due to the nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Due to the nature of this crime, only the complainant can testify against the assailant. Accordingly, conviction for rape may be solely based on the complainant's testimony provided it is credible, natural, convincing, and consistent with human nature and the normal course of things.

The trial court observed that AAA's testimony was credible, straightforward, clear, and convincing. She ably identified accused-appellant as her attacker and described in detail how she was sexually assaulted. There is no reason a child would fabricate such a serious accusation such as rape and risk public humiliation if not to seek justice. It is for this reason that testimonies of child-victims are normally given full weight and credence, since when minors say they were raped, they say in effect all that is necessary to show that rape was committed.

Time-tested is the principle that when a woman says she has been raped, she says in effect all that is necessary to show that she has been so raped. A woman will not expose herself to the humiliation of a trial with its attendant publicity and the morbid curiosity it would arouse, unless she has been truly wronged and seek atonement for her abuse.

It is inconceivable that [AAA], a very young woman, 11 years of age would concoct a story that she had been raped by her neighbor, if indeed she was not sexually molested and that her only intention is to seek justice from the bestial and harrowing experience she suffered from the hands of the accused, Sergio Lagarde. In fact, her family and family of the accused, Sergio Lagarde, has no misunderstanding that would propel her to file such a heinous crime against the accused.

Accused-appellant, on the other hand, could only offer denial and alibi as defenses. His alibi that he spent the afternoon drinking with other visitors does not deserve merit since he was present in the same house where the victim was. The copra dryer was only 150 meters away from the house. For alibi to prosper, the accused persons must establish, by clear and convincing evidence, (1) their

presence at another place at the time of the perpetration of the offense and (2) the physical impossibility of their presence at the scene of the crime. It should also be supported by the most convincing evidence since it is an inherently weak defense which can easily be fabricated.

PEOPLE OF THE PHILIPPINES, *Petitioner,* -versus- SPO4 EMILIANO ANONAS, *Respondent.*
G.R. No. 156847, FIRST DIVISION, January 31, 2007, SANDOVAL-GUTIERREZ, *J.*

The inordinate delay in terminating the preliminary investigation of an accused violates his constitutional right to due process. The preliminary investigation of the respondent for the offenses charged took more than four years. He was apprehended for the offenses charged on November 19, 1996. Having been arrested without a warrant of arrest and not having been afforded a formal investigation, he prayed for reinvestigation of the cases. The trial court, in an Order dated January 28, 1997 ordered a reinvestigation which was terminated only on February 16, 2001. In fact, even the Solicitor General admitted "it took some time for the City Prosecutor to terminate and resolve the reinvestigation.

There can be no question that respondent was prejudiced by the delay, having to be confined for more than four oppressive years for failure of the investigating prosecutors to comply with the law on preliminary investigation. As aptly held by the Court of Appeals, respondent's right to due process had been violated.

FACTS:

On November 19, 1996, SPO4 Emiliano Anonas, respondent, assigned at the Western Police District, was apprehended by his colleagues during a raid in Sta. Cruz, Manila. The apprehending police officers claimed that he and four other persons were sniffing methamphetamine hydrochloride, more popularly known as shabu, a regulated drug; and that he was in possession of an unlicensed .38 caliber revolver.

On December 9, 1996, the City Prosecutor of Manila filed with the Regional Trial Court (RTC), Branch 53, same city, two separate Informations against respondent, one for illegal possession of methamphetamine hydrochloride and another for illegal possession of firearm.

Respondent filed with the trial court a motion for reinvestigation on grounds that he was apprehended without a warrant of arrest and that no preliminary investigation was conducted. On January 28, 1997, the trial court granted respondent's motion.

On April 14, 1998, Prosecutor Virgilio Patag, designated to conduct the reinvestigation, was appointed judge of the RTC in Iloilo. Apparently, he did not inform the prosecutor who took his place about the pending reinvestigation. Meanwhile, respondent has remained in detention. Respondent filed with the trial court a motion to dismiss the Informations, contending that the delay in the reinvestigation violated his right to due process.

On January 12, 2001, the trial court heard the motion to dismiss. It turned out that Prosecutor Danilo Formoso, who took over the case, was not aware of the pending reinvestigation. The trial court then directed him to terminate the reinvestigation within thirty (30) days. On August 9, 2001, the trial court issued an Order denying respondent's motion to dismiss the Informations.

The Court of Appeals granted the petition and set aside the Order of the trial court dated August 9, 2001 and dismissed the criminal charges against respondent. The Court of Appeals ruled that having been made to wait for the resolution of his motion for reinvestigation for almost five years while being detained, violated his right to due process. The Court of Appeals then ordered that respondent be released from custody.

ISSUE:

Whether the appellate court erred in holding that respondent's right to due process has been violated. (NO)

RULING:

Philippine organic and statutory law expressly guarantees that in all criminal prosecutions, the accused shall enjoy his right to a speedy trial. Section 16, Article III of the 1987 Constitution provides that "All persons shall have the right to speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This is reinforced by Section 3(f), Rule 112 of the 1985 Rules on Criminal Procedure, as amended, which requires that "the investigating officer shall resolve the case within ten (10) days from the conclusion of the investigation." To ensure a speedy trial of all criminal cases before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court and Municipal Circuit Trial Court, Republic Act No. 8493 (The Speedy Trial Act of 1998) was enacted on February 4, 1998. To implement its provisions, the Court issued SC Circular No. 38-98 dated September 15, 1998 setting a time limit for arraignment and pre-trial for thirty (30) days from the date the court acquires jurisdiction over the person of the accused.

The inordinate delay in terminating the preliminary investigation of an accused violates his constitutional right to due process. The preliminary investigation of the respondent for the offenses charged took more than four years. He was apprehended for the offenses charged on November 19, 1996. Having been arrested without a warrant of arrest and not having been afforded a formal investigation, he prayed for reinvestigation of the cases. The trial court, in an Order dated January 28, 1997 ordered a reinvestigation which was terminated only on February 16, 2001. In fact, even the Solicitor General admitted "it took some time for the City Prosecutor to terminate and resolve the reinvestigation.

There can be no question that respondent was prejudiced by the delay, having to be confined for more than four oppressive years for failure of the investigating prosecutors to comply with the law on preliminary investigation. As aptly held by the Court of Appeals, respondent's right to due process had been violated.

DANILO S. URSUA, *Petitioner,* -versus- REPUBLIC OF THE PHILIPPINES, *Respondent.*
G.R. No. 178193, EN BANC, January 24, 2012, VELASCO, *J.*

The right to a speedy trial is available only to an accused and is a peculiarly criminal law concept, while the broader right to a speedy disposition of cases may be tapped in any proceedings conducted by state agencies. Thus, in Licaros the Court dismissed the criminal case against the accused due to the palpable transgression of his right to a speedy trial.

In the instant case, the appropriate right involved is the right to a speedy disposition of cases, the recovery of ill-gotten wealth being a civil suit.

An examination of the petitioners' arguments and the cited indicia of delay would reveal the absence of any allegation that petitioners moved before the Sandiganbayan for the dismissal of the case on account of vexatious, capricious and oppressive delays that attended the proceedings. Following Tello, petitioners are deemed to have waived their right to a speedy disposition of the case. Moreover, delays, if any, prejudiced the Republic as well. What is more, the alleged breach of the right in question was not raised below. As a matter of settled jurisprudence, but subject to equally settled exception, an issue not raised before the trial court cannot be raised for the first time on appeal.

FACTS:

The late President Ferdinand E. Marcos was President for two terms and, during the second term, declared Martial Law through Proclamation No. 1081 dated September 21, 1972. From January 17, 1973 to April 7, 1981, [he] exercised the powers and prerogative of President under the 1935 Constitution and the powers and prerogative of President . . . the 1973 Constitution. He promulgated various [P.D.s], among which were P.D. No. 232, P.D. No. 276, P.D. No. 414, P.D. No. 755, P.D. No. 961 and P.D. No. 1468.

Defendants Maria Clara Lobregat and Jose R. Eleazar, Jr. were [PCA] Directors during the period 1970 to 1986. Plaintiff admits the existence of the agreement of May 1975 between Pedro Cojuangco and Eduardo Cojuanco for the sale and purchase of contract shares and the agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines between Eduardo Cojuangco and Philippine Coconut Authority.

Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, et al. admit that the (PCA) was the "other buyers" represented by Cojuangco, Jr. in the May 1975 Agreement entered into between Pedro Cojuangco (on his own behalf and in behalf of other sellers listed in Annex "A" of the agreement) and Cojuangco, Jr. (on his own behalf and in behalf of the other buyers). Defendant Cojuangco insists he was the "only buyer" under the aforesaid Agreement.

Defendants Lobregat, *et al.,* and COCOFED, *et al.,* and Ballares, et al. admit that in addition to the 137,866 FUB shares of Pedro Cojuangco, et al. covered by the Agreement, other FUB stockholders sold their shares to PCA such that the total number of FUB shares purchased by PCA increased from 137,866 shares to 144,400 shares, the OPTION SHARES referred to in the Agreement of May 25, 1975. Defendant Cojuangco did not make said admission as to the said 6,534 shares in excess of the 137,866 shares covered by the Agreement with Pedro Cojuangco.

Defendants Lobregat, *et al*. and COCOFED, et al. and Ballares, *et al.* admit that the Agreement dated July 29, 1975 as the "Agreement for the Acquisition of a Commercial Bank for the Benefit of Coconut Farmers" executed by the Philippine Coconut Authority" refers to the "AGREEMENT FOR THE ACQUISITION OF A COMMERCIAL BANK FOR THE BENEFIT OF THE COCONUT FARMERS OF THE PHILIPPINES" dated May 25, 1975 between defendant Eduardo M. Cojuangco, Jr. and the PCA. Defendants also admit that the PCA used public funds, in the total amount of P150 million, to purchase the FUB shares amounting to 72.2% of the authorized capital stock of the FUB, although the PCA was later reimbursed from the coconut levy funds and that the PCA subscription in the increased capitalization of the FUB, which was later renamed the UCPB, came from the said coconut levy funds.

Pursuant to the May 25, 1975 Agreement, out of the 72.2% shares of the authorized and the increased capital stock of the FUB (later UCPB), entirely paid for by PCA, 64.98% of the shares were placed in the name of the "PCA for the benefit of the coconut farmers" and 7,22% were given to defendant Cojuangco. The remaining 27.8% shares of stock in the FUB which later became the UCPB were not covered by the two (2) agreements. There were shares forming part of the aforementioned 64.98% which were later sold or transferred to non-coconut farmers.

The fully paid 95.304 shares of the FUB, later the UCPB, acquired by defendant Cojuangco, Jr. pursuant to the May 25, 1975 Agreement were paid for by the PCA in accordance with the terms and conditions provided in the said Agreement.
Defendants claim that the UCPB shares in question have legitimately become the private properties of the 1,405,366 coconut farmers solely on the basis of their having acquired said shares in compliance with R.A. No. 6260, P.D. Nos. 755, 961 and 1468 and the administrative issuances of the PCA.

On July 11, 2003, the Sandiganbayan issued the assailed PSJ-A finding for the Republic, the judgment accentuated by (a) the observation that COCOFED has all along manifested as representing over a million coconut farmers and (b) a declaration on the issue of ownership of UCPB shares and the unconstitutionality of certain provisions of P.D. No. 755 and its implementing regulations. On the matter of ownership in particular, the anti-graft court declared that the 64.98% sequestered "Farmers' UCPB shares," plus other shares paid by PCA are "***conclusively***" owned by the Republic.

On May 11, 2007, in CC 0033-A, the Sandiganbayan issued a Resolution denying Lobregat's and COCOFED's separate motions to set the case for trial/hearing, noting that there is no longer any point in proceeding to trial when the issue of their claim of ownership of the sequestered UCPB shares and related sub-issues have already been resolved in PSJ-A.
COCOFED et al., in G.R. Nos. 177857-58, impute reversible error on the Sandiganbayan for (a) assuming jurisdiction over CC Nos. 0033-A and 0033-F despite the Republic's failure to establish below the jurisdictional facts, i.e., that the sequestered assets sought to be recovered are ill-gotten in the context of E.O. Nos. 1, 2, 14 and 14-A; (b) declaring certain provisions of coco levy issuances unconstitutional; and (c) denying the petitioners' plea to prove that the sequestered assets belong to coconut farmers. Specifically, petitioners aver:

"IV. The voluminous records of these ill-gotten wealth cases readily reveal the various dilatory tactics respondent Republic resorted to…. As a result, despite the lapse of almost twenty (20) years of litigation, the respondent Republic has not been required to, and has not even attempted to prove, the bases of its perjurious claim that the sequestered assets constitute ill-gotten wealth of former President Marcos and his crony, Cojuangco. In tolerating respondent Republic's antics for almost twenty (20) years…, the Sandiganbayan so glaringly departed from procedure and thereby flagrantly violated COCOFED, et al.'s right to speedy trial."

ISSUE:

Whether the petitioners' rights to a speedy trial and speedy disposition of cases were violated.

RULING:

It must be clarified right off that the right to a speedy disposition of case and the accused's right to a speedy trial are distinct, albeit kindred, guarantees, the most obvious difference being that a speedy disposition of cases, as provided in Article III, Section 16 of the Constitution, obtains regardless of the nature of the case.

The right to a speedy trial is available only to an accused and is a peculiarly criminal law concept, while the broader right to a speedy disposition of cases may be tapped in any proceedings conducted by state agencies. Thus, in Licaros the Court dismissed the criminal case against the accused due to the palpable transgression of his right to a speedy trial.

In the instant case, the appropriate right involved is the right to a speedy disposition of cases, the recovery of ill-gotten wealth being a civil suit. Nonetheless, the Court has had the occasion to dismiss several cases owing to the infringement of a party's right to a speedy disposition of cases. Dismissal of the case for violation of this right is the general rule.

An examination of the petitioners' arguments and the cited indicia of delay would reveal the absence of any allegation that petitioners moved before the Sandiganbayan for the dismissal of the case on account of vexatious, capricious and oppressive delays that attended the proceedings. Following Tello, petitioners are deemed to have waived their right to a speedy disposition of the case. Moreover, delays, if any, prejudiced the Republic as well. What is more, the alleged breach of the right in question was not raised below. As a matter of settled jurisprudence, but subject to equally settled exception, an issue not raised before the trial court cannot be raised for the first time on appeal. The sporting idea forbidding one from pulling surprises underpins this rule. For these reasons, the instant case cannot be dismissed for the alleged violation of petitioners' right to a speedy disposition of the case.

JOHN HILARIO y SIBAL, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 161070, THIRD DIVISION, April 14, 2008, AUSTRIA-MARTINEZ, *J.*

It cannot be overstressed therefore, that in criminal cases, as held in Telan, the right of an accused person to be assisted by a member of the bar is immutable; otherwise, there would be a grave denial of due process.

Cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better.

While as a general rule, the failure of petitioner to file his motion for reconsideration within the 15-day reglementary period fixed by law rendered the resolution final and executory, we have on some occasions relaxed this rule.

Petitioner claims that he actually received the CA Resolution dismissing his petition for certiorari only on September 4, 2003 even as the same Resolution was earlier received on September 1, 2003 at the address written in his petition by a certain Leonora Coronel. Apparently, Bacuraya is not a lawyer. Ordinarily, petitioner being detained at the National Penitentiary, Muntinlupa, the CA should have also sent a copy of such Resolution to his place of detention. Considering that petitioner only received the Resolution on September 4, 2003, we find the two days delay in filing his motion for reconsideration pardonable as it did not cause any prejudice to the other party.

Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.

FACTS:

Petitioner, together with one Gilbert Alijid (Alijid), was charged with two counts of Murder in the Regional Trial Court (RTC), Branch 76, Quezon City to which petitioner, assisted by counsel *de parte*, pleaded not guilty.

The RTC rendered its Decision finding petitioner and his co-accused Alijid guilty beyond reasonable doubt of the crime of homicide

On May 10, 2002, petitioner, this time unassisted by counsel, filed with the RTC a Petition for Relief from the Decision dated December 5, 2001 together with an affidavit of merit. In his petition, petitioner contended that at the time of the promulgation of the judgment, he was already confined at Quezon City Jail and was directed to be committed to the National Penitentiary in Muntinlupa; that he had no way of personally filing the notice of appeal thus he instructed his lawyer to file it on his behalf; that he had no choice but to repose his full trust and confidence to his lawyer; that he had instructed his lawyer to file the necessary motion for reconsideration or notice of appeal; that on May 2, 2002, he was already incarcerated at the New Bilibid Prisons, Muntinlupa City and learned from the grapevine of his impending transfer to the Iwahig Penal Colony, Palawan; that believing that the notice of appeal filed by his counsel prevented the Decision dated December 5, 2001 from becoming final to warrant his transfer, he instructed his representative to get a copy of the notice of appeal from the RTC; that no notice of appeal was filed by his lawyer in defiance of his clear instructions; and that the RTC Decision showed that it was received by his counsel on February 1, 2002 and yet the counsel did not inform him of any action taken thereon.

Petitioner argued that he was meted a total of 16 years imprisonment or almost equal to the previous capital punishment of 20 years which was given an automatic review by the Supreme Court, thus it is of greater interest of justice that his case be reviewed by the appellate court; and that no damage will be sustained if the appeal is given due course since he continues to languish in jail while the Petition for Relief is pending.

The RTC dismissed petitioner's petition for relief. Petitioner, again by himself, filed a petition for *certiorari* with the CA on the ground that the RTC committed grave abuse of discretion in dismissing his petition for relief. He claims that the delay in appealing his case without his fault constitutes excusable negligence to warrant the granting of his petition for relief.

The CA dismissed the petition. Hence, herein recourse filed by petitioner, still unassisted by counsel.

ISSUE:

Whether or not the delay in appealing the instant case due to the defiance of the petitioner's counsel *de oficio* to seasonably file a Notice of Appeal constitutes excusable negligence to entitle the undersigned detention prisoner/petitioner to pursue his appeal.

RULING:

The RTC Decision dated December 5, 2001, finding petitioner guilty of two counts of homicide, the Comment of the City Prosecutor as well as the counsel's withdrawal of appearance were considered by the CA as relevant and pertinent to the petition for *certiorari*, thus it dismissed the petition for failure to attach the same. However, the CA failed to consider the fact that the petition before it was filed by petitioner, a detained prisoner, without the benefit of counsel. A litigant who is not a lawyer is not expected to know the rules of procedure. In fact, even the most experienced lawyers get tangled in the web of procedure. We have held in a civil case that to demand as much from ordinary citizens whose only *compelle intrare* is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no right to the property but because he does not know how to establish such right. This finds application specially if the liberty of a person is at stake.

The filing of the petition for *certiorari* by petitioner without counsel should have alerted the CA and should have required petitioner to cause the entry of appearance of his counsel. Although the petition filed before the CA was a petition for *certiorari* assailing the RTC Order dismissing the petition for relief, the ultimate relief being sought by petitioner was to be given the chance to file an appeal from his conviction, thus the need for a counsel is more pronounced. To repeat the ruling in *Telan*, no arrangement or interpretation of law could be as absurd as the position that the right to counsel exists only in the trial courts and that thereafter, the right ceases in the pursuit of the appeal. It is even more important to note that petitioner was not assisted by counsel when he filed his petition for relief from judgment with the RTC.

It cannot be overstressed therefore, that in criminal cases, as held in *Telan*, the right of an accused person to be assisted by a member of the bar is immutable; otherwise, there would be a grave denial of due process.

Cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better.

While as a general rule, the failure of petitioner to file his motion for reconsideration within the 15-day reglementary period fixed by law rendered the resolution final and executory, we have on some occasions relaxed this rule.

Petitioner claims that he actually received the CA Resolution dismissing his petition for *certiorari* only on September 4, 2003 even as the same Resolution was earlier received on September 1, 2003 at the address written in his petition by a certain Leonora Coronel. Apparently, Bacuraya is not a lawyer. Ordinarily, petitioner being detained at the National Penitentiary, Muntinlupa, the CA should have also sent a copy of such Resolution to his place of detention. Considering that petitioner only received the Resolution on September 4, 2003, we find the two days delay in filing his motion for reconsideration pardonable as it did not cause any prejudice to the other party.

Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.

Petitioner was represented in the RTC by Atty. Rivera of the PAO. Section 1, Article IV of PAO Memorandum Circular No.18 series of 2002, the Amended Standard Office Procedures in Extending Legal Assistance (PAO Memorandum Circular), provides that all appeals must be made upon the request of the client himself and only meritorious cases shall be appealed; while Section 2, Article II of PAO Memorandum Circular provides that in criminal cases, the accused enjoys the constitutional presumption of innocence until the contrary is proven, hence cases of defendants in criminal actions are considered meritorious and therefore, should be appealed, upon the client's request.

In this case, petitioner claims he had instructed the PAO lawyer to file an appeal. Under the PAO Memorandum Circular, it was the duty of the latter to perfect the appeal. Thus, in determining whether the petition for relief from judgment is based on a meritorious ground, it was crucial to ascertain whether petitioner indeed gave explicit instruction to the PAO lawyer to file an appeal but the latter failed to do so.

The PAO lawyer, Atty. Rivera, filed his Withdrawal of Appearance on September 30, 2002, almost three months before the RTC rendered its assailed Order dated December 13, 2002, dismissing the petition for relief. The RTC had ample time to require the PAO lawyer to comment on the petition for relief from judgment, before issuing the questioned Order. Had the RTC done so, there would have been a factual basis for the RTC to determine whether or not the PAO lawyer was grossly negligent; and eventually, whether the petition for relief from judgment is meritorious. If there was no instruction from petitioner to file an appeal, then there was no obligation on the part of the PAO lawyer to file an appeal as stated in the PAO Memorandum Circular and negligence could not be attributed to him. However, if indeed there was such an instruction to appeal but the lawyer failed to do so, he could be considered negligent.

Thus, there was no basis for the RTC to conclude that the claim of petitioner that he instructed the PAO lawyer to file an appeal as self-serving and unsubstantiated. The RTC's dismissal of the petition for relief was done with grave abuse of discretion amounting to an undue denial of the petitioner's right to appeal.

In all criminal prosecutions, the accused shall have the right to appeal in the manner prescribed by law. The importance and real purpose of the remedy of appeal has been emphasized in *Castro v. Court of Appeals* where we ruled that an appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. **While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution**. Thus, the importance of finding out whether petitioner's loss of the right to appeal was due to the PAO lawyer's negligence and not at all attributed to petitioner.

However, we cannot, in the present petition for review on *certiorari,* make a conclusive finding that indeed there was excusable negligence on the part of the PAO lawyer which prejudiced petitioner's right to appeal his conviction. To do so would be pure speculation or conjecture. Therefore, a remand

of this case to the RTC for the proper determination of the merits of the petition for relief from judgment is just and proper.

LENIDO LUMANOG and AUGUSTO SANTOS, *Petitioners,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 182555, EN BANC, February 8, 2011, VILLARAMA, *J.*

The rights of persons under custodial investigation are enshrined in Article III, Section 12 of the 1987 Constitution, which provides:

> *"Sec. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.*
>
> *(2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.*
>
> *(3) Any confession or admission obtained in violation of this or section 17 hereof (right against self-incrimination) shall be inadmissible in evidence against him.*
>
> *(4) The law shall provide for penal and civil sanctions for violation of this section as well as compensation for the rehabilitation of victims of tortures or similar practices, and their families."*

Custodial investigation refers to the critical pre-trial stage when the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular person as a suspect. Police officers claimed that appellants were apprehended as a result of "hot pursuit" activities on the days following the ambush-slay of Abadilla. There is no question, however, that when appellants were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, while the rest of appellants were taken by the same operatives in follow-up operations after Joel provided them with the identities of his conspirators and where they could be found.

FACTS:

In June 13, 1996, at around 8:00 o'clock in the morning, Abadilla left his house at Soliven I, Loyola Grand Villas, Loyola Heights, Quezon City and drove his car. Soon after he left, his wife Susan Abadilla received a phone call from him and they briefly talked. Just a few minutes after their conversation, she received another phone call from Abadilla's tailor who was asking about her husband because, according to him, he heard a radio broadcast report that Abadilla met an accident.

Meanwhile, at about 8:40 a.m., Senior Police Officer (SPO) 2 Arthur Ortiz answered a telephone call from a male person who reported a shooting incident along Katipunan Avenue. Station Commander Police Chief Inspector (Insp.) Edward Villena, together with his investigators SPO2 Wahab

Magundacan, Police Officer (PO) 2 Gerardo Daganta and PO1 Ronald Francisco immediately boarded a PNP marked vehicle and headed towards Katipunan Avenue.

They found the victim's bloodied and bullet-riddled body partly slumped onto the pavement at the car's left door, which was open. The front windshield and sliding glass windows on the left and right side were shattered; a hole was seen on the glass window of the left rear door, apparently pierced by a bullet. A sketch was prepared by PO2 Daganta who also interviewed some of the witnesses present at the crime scene. The spot report and list of recovered items (including a Philippine Military Academy gold ring on which was engraved the name "Rolando N. Abadilla") were later prepared by SPO2 Magundacan at the police station.

On the same day, witnesses Espiritu, Urbano, Icot, Alejo, and Alarcon gave their respective statements before the Criminal Investigation Division of the Central Police District Command.

Based on their accounts, the black Honda Accord with Plate Number RNA-777 was caught in traffic while traversing Katipunan Avenue going to Santolan at past 8:00 o'clock on the morning of June 13, 1996. While on a stop position, four (4) men armed with handguns surrounded the said car and fired several successive shots at the man inside it. One (1) of the men who were positioned at the left side of the car opened its door and took something inside. He grabbed the victim by the neck and dropped his body down towards the pavement at the left door. When there were already several people who had come out to see what was happening, one of the suspects shouted, "Walang gagalaw…Dapa!"

The victim was pronounced dead on arrival at the hospital. The victim's identity was confirmed by Susan Abadilla who had rushed to the hospital.

Joel de Jesus, alias "Tabong," was apprehended on June 19, 1996 at his house at Dahlia St., Fairview, Quezon City. In his first statement, Joel de Jesus narrated that on June 13, 1996 at 6:30 in the morning after parking his tricycle at the corner of Regalado and Camaro Streets, Fairview, he was fetched by Lorenzo "Larry" delos Santos who was his neighbor at Ruby St. Larry was accompanied by his nephew Ogie, and a certain "Tisoy" who drove the owner-type jeep. Larry told him they were going to kill a big-time personality ("may titirahin na malaking tao"), whose name was Abadilla, and that they were going to ambush the latter at Katipunan Avenue. After the shooting, they separated ways: the owner-type jeep he was riding in headed towards Santolan; Cesar's group split so that three (3) of them rode the L-300 van and the three (3) others boarded a car stolen from a woman driver.

In his second statement, Joel pointed to his cohorts in a police line-up inside the CID-CPDC, PNP-NCR, Camp Karingal, Quezon City where he positively identified Rameses de Jesus ("Ram"), Cesar Fortuna, Lenido Lumanog and PO2 Romeo Costibolo as among those who participated in the ambush-slaying of Abadilla.

The prosecution presented the testimonies of police officers who conducted the investigation and follow-up operations up to the actual apprehension of suspects in the killing of Abadilla.

The witness declared that the constitutional mandate and requirements under Republic Act (R.A.) No. 7438 had been complied with because he secured the services of a counsel during the interrogation of then suspect Joel de Jesus when his sworn statement was taken on June 20, 1996. He had informed the said suspect of his right to counsel in the presence of CID personnel and when he brought him to the office of Atty. Confesor R. Sansano of the Integrated Bar of the Philippines (IBP)

located at the second floor of the Hall of Justice, Quezon City Hall. Asked why it occurred to him to bring the suspect to the IBP, the witness replied that he believed IBP was a private, not a government, institution. He also asked Joel -- who was allowed to make a telephone call, although he was not aware if Joel made any such call -- whether he had his own lawyer. He recalled asking Joel if he was willing to go with them to the City Hall, because he had asked to secure the services of counsel.

On September 26, 1996, the trial court conducted an ocular inspection of the place where the shooting incident took place, in the presence of the prosecutors, defense counsel, Alejo and Maj. Villena. Alejo was asked to demonstrate his exact location, the relative positions of the assailants and the victim's car, and the entire incident he had witnessed in the morning of June 13, 1996.

P/Insp. Castillo, on re-direct examination testified that Atty. Sansano actively assisted Joel de Jesus during the time the latter's Sinumpaang Salaysay was being taken by SPO2 Garcia, Jr. There were questions propounded to Joel which Atty. Sansano had told Joel not to answer, and advice was given by said counsel. They left Quezon City Hall at about 5:00 o'clock in the afternoon and returned to the CPDC headquarters. He maintained that all the accused were brought before the City Prosecutor for inquest proceedings prior to the filing of the information in court.

All the accused raised the defense of alibi, highlighted the negative findings of ballistic and fingerprint examinations, and further alleged torture in the hands of police officers and denial of constitutional rights during custodial investigation.

The trial court was firmly convinced that the prosecution succeeded in establishing the identities of accused Joel, Rameses, Lumanog, Fortuna and Augusto as the perpetrators in the fatal shooting of Abadilla in the morning of June 13, 1996. It found that both security guards Alejo and Herbas confirmed the presence of Joel de Jesus in the crime scene. The trial court also found that the statements of Joel, in which he admitted his participation in the crime assisted by Atty. Sansano and in the presence of the IBP personnel and police investigators, were not flawed by intimidation or violence when obtained and sworn to before the fiscal. The common defense of alibi put up by all the accused was rejected by the trial court.

The CA upheld the conviction of the accused-appellants based on the credible eyewitness testimony of Alejo, who vividly recounted before the trial court their respective positions and participation in the fatal shooting of Abadilla, having been able to witness closely how they committed the crime.

ISSUE:

Whether the rights of the accused during custodial investigation were violated.

RULING:

Once again, this Court upholds the constitutional mandate protecting the rights of persons under custodial investigation. But while we strike down the extrajudicial confession extracted in violation of constitutionally enshrined rights and declare it inadmissible in evidence, appellants are not entitled to an acquittal because their conviction was not based on the evidence obtained during such custodial investigation. Even without the extrajudicial confession of appellant Joel de Jesus who was the first to have been arrested, the trial court's judgment is affirmed, as the testimonial and documentary evidence on record have established the guilt of appellants beyond reasonable doubt.

The rights of persons under custodial investigation are enshrined in Article III, Section 12 of the 1987 Constitution, which provides:

> "Sec. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or section 17 hereof (right against self-incrimination) shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violation of this section as well as compensation for the rehabilitation of victims of tortures or similar practices, and their families."

Custodial investigation refers to the critical pre-trial stage when the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular person as a suspect. Police officers claimed that appellants were apprehended as a result of "hot pursuit" activities on the days following the ambush-slay of Abadilla. There is no question, however, that when appellants were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, while the rest of appellants were taken by the same operatives in follow-up operations after Joel provided them with the identities of his conspirators and where they could be found.

Police officers claimed that upon arresting Joel, they informed him of his constitutional rights to remain silent, that any information he would give could be used against him, and that he had the right to a competent and independent counsel, preferably, of his own choice, and if he cannot afford the services of counsel he will be provided with one (1). However, since these rights can only be waived in writing and with the assistance of counsel, there could not have been such a valid waiver by Joel, who was presented to Atty. Sansano at the IBP Office, Quezon City Hall only the following day and stayed overnight at the police station before he was brought to said counsel.

P/Insp. Castillo admitted that the initial questioning of Joel began in the morning of June 20, 1996, the first time said suspect was presented to him at the CPDC station, even before he was brought to the IBP Office for the taking of his formal statement. Thus, the possibility of appellant Joel having been subjected to intimidation or violence in the hands of police investigators as he claims, cannot be discounted. The constitutional requirement obviously had not been observed. Settled is the rule that the moment a police officer tries to elicit admissions or confessions or even plain information from a suspect, the latter should, at that juncture, be assisted by counsel, unless he waives this right in writing and in the presence of counsel. The purpose of providing counsel to a person under custodial investigation is to curb the police-state practice of extracting a confession that leads appellant to make self-incriminating statements.

Even assuming that custodial investigation started only during Joel's execution of his statement before Atty. Sansano on June 20, 1996, still the said confession must be invalidated. To be acceptable, extrajudicial confessions must conform to constitutional requirements. A confession is not valid and not admissible in evidence when it is obtained in violation of any of the rights of persons under custodial investigation.

Since Joel was provided with a lawyer secured by CPDC investigators from the IBP-Quezon City chapter, it cannot be said that his right to a counsel "preferably of his own choice" was not complied with, particularly as he never objected to Atty. Sansano when the latter was presented to him to be his counsel for the taking down of his statement. The phrase "preferably of his own choice" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense; otherwise the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest. Thus, while the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel – or where the preferred lawyer is not available – is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection against the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer.

The right to counsel has been written into our Constitution in order to prevent the use of duress and other undue influence in extracting confessions from a suspect in a crime. The lawyer's role cannot be reduced to being that of a mere witness to the signing of a pre-prepared confession, even if it indicated compliance with the constitutional rights of the accused. The accused is entitled to effective, vigilant and independent counsel. Where the prosecution failed to discharge the State's burden of proving with clear and convincing evidence that the accused had enjoyed effective and vigilant counsel before he extrajudicially admitted his guilt, the extrajudicial confession cannot be given any probative value.

With respect to the other appellants, they were likewise entitled to the rights guaranteed by the Constitution when they were brought to the police station as suspects and were, therefore under custodial investigation. However, they cannot simply rely on those violations of constitutional rights during custodial investigation, which are relevant only when the conviction of the accused by the trial court is based on the evidence obtained during such investigation. As for the matters stated in the extrajudicial confession of appellant Joel, these were not the basis for appellants' conviction. It has to be stressed further that no confession or statement by appellants Fortuna, Lumanog, Augusto and Rameses was used as evidence by the prosecution at the trial.

After a thorough and careful review, we hold that there exists sufficient evidence on record to sustain appellants' conviction even without the extrajudicial confession of appellant Joel de Jesus.

Appellants further cite the comment made by the United Nations Human Rights Committee in its Communication No. 1466/2006 that under the circumstances, there was, insofar as the eight (8)-year delay in the disposition of their appeal in the CA was concerned, a violation of Article 14, paragraph 3 (c) of the International Covenant on Civil and Political Rights (1966).

Section 16, Article III of the 1987 Constitution provides that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This protection extends to all citizens and covers the periods before, during and after trial, affording broader protection than Section 14(2), which guarantees merely the right to a speedy trial.

It must be stressed that in the determination of whether the right to speedy disposition of cases has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. A mere mathematical reckoning of the time involved would not be sufficient. Under the circumstances, we hold that the delay of (4) four years during which the case remained pending with the CA and this Court was not unreasonable, arbitrary or oppressive.

RUBEN DEL CASTILLO, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 185128, THIRD DIVISION, January 30, 2012, PERALTA, *J.*

While it is not necessary that the property to be searched or seized should be owned by the person against whom the search warrant is issued, there must be sufficient showing that the property is under appellant's control or possession.

The prosecution must prove that the petitioner had knowledge of the existence and presence of the drugs in the place under his control and dominion and the character of the drugs. With the prosecution's failure to prove that the nipa hut was under petitioner's control and dominion, there casts a reasonable doubt as to his guilt. In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused - in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.

FACTS:

Pursuant to a confidential information that petitioner was engaged in selling *shabu*, police officers headed by SPO3 Bienvenido Masnayon, after conducting surveillance and test-buy operation at the house of petitioner, secured a search warrant from the RTC and served the search warrant to petitioner.

Upon arrival, somebody shouted "*raid*," which prompted them to immediately disembark from the jeep they were riding and went directly to petitioner's house and cordoned it. When they went upstairs, they met petitioner's wife and informed her that they will implement the search warrant. But before they can search the area, SPO3 Masnayon claimed that he saw petitioner run towards a small structure, a nipa hut, in front of his house. Masnayon chased him but to no avail, because he and his men were not familiar with the entrances and exits of the place. They all went back to the residence of the petitioner and closely guarded the place where the subject ran for cover.

In the presence of the *barangay tanod*, Nelson Gonzalado, and the elder sister of petitioner named Dolly del Castillo, searched the house of petitioner including the nipa hut where the petitioner allegedly ran for cover. His men who searched the residence of the petitioner found nothing, but one of the *barangay tanods* was able to confiscate from the nipa hut several articles, including four (4) plastic packs containing white crystalline substance. Consequently, the articles that were confiscated

were sent to the PNP Crime Laboratory for examination. The contents of the four (4) heat- sealed transparent plastic packs were subjected to laboratory examination, the result of which proved positive for the presence of *methamphetamine hydrochloride*, or *shabu*.

Thus, an Information was filed before the RTC against petitioner, charging him with violation of Section 16, Article III of R.A. 6425, as amended. After trial, the RTC found petitioner guilty beyond reasonable of the charge against him in the Information. The CA affirmed the decision of the RTC.

ISSUE:

Whether petitioner is guilty of violation of Section 16 of R.A. 6425 beyond reasonable doubt. (NO)

RULING:

It must be put into emphasis that this present case is about the violation of Section 16 of R.A. 6425. In every prosecution for the illegal possession of *shabu*, the following essential elements must be established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.

In *People v. Tira*, this Court explained the concept of possession of regulated drugs, to wit:

> This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus posidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

While it is not necessary that the property to be searched or seized should be owned by the person against whom the search warrant is issued, there must be sufficient showing that the property is under appellant's control or possession.

The prosecution must prove that the petitioner had knowledge of the existence and presence of the drugs in the place under his control and dominion and the character of the drugs. With the prosecution's failure to prove that the nipa hut was under petitioner's control and dominion, there casts a reasonable doubt as to his guilt. In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused - in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.

ZENON R. PEREZ, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN, *Respondents.*

G.R. No. 164763, THIRD DIVISION, February 12, 2008, REYES, R.T, *J.*

The 1987 Constitution guarantees the right of an accused to speedy trial. Both the 1973 Constitution in Section 16 of Article IV and the 1987 Constitution in Section 16 of Article III, Bill of Rights, are also explicit in granting to the accused the right to speedy disposition of his case.

In Barker v. Wingo, the United States Supreme Court was confronted for the first time with two "rigid approaches" on speedy trial as "ways of eliminating some of the uncertainty which courts experience protecting the right."

*The first approach is the **"fixed-time period"** which holds the view that "the Constitution requires a criminal defendant to be offered a trial within a specified time period." The second approach is the **"demand-waiver rule"** which provides that "a defendant waives any consideration of his right to speedy trial for any period prior to which he has not demanded trial.*

*The Court went on to adopt a middle ground: the **"balancing test,"** in which "the conduct of both the prosecution and defendant are weighed." Philippine jurisprudence has, on several occasions, adopted the balancing test. We rule that petitioner was not deprived of his right to a speedy disposition of his case.*

More important than the absence of serious prejudice, petitioner himself did not want a speedy disposition of his case. Petitioner was duly represented by counsel de parte in all stages of the proceedings before the Sandiganbayan. From the moment his case was deemed submitted for decision up to the time he was found guilty by the Sandiganbayan, however, petitioner has not filed a single motion or manifestation which could be construed even remotely as an indication that he wanted his case to be dispatched without delay.

FACTS:

On December 28, 1988, an audit team headed by Auditor I Arlene R. Mandin, conducted a cash examination on the account of petitioner, who was then the acting municipal treasurer of Tubigon, Bohol. Petitioner was absent on the first scheduled audit at his office. A radio message was sent to Loon, the town where he resided, to apprise him of the on-going audit. The following day, the audit team counted the cash contained in the safe of petitioner in his presence. In the course of the audit, the amount of ₱21,331.79 was found in the safe of petitioner.

The audit team embodied their findings in the Report of Cash Examination which also contained an inventory of cash items. Based on the said audit, petitioner was supposed to have on hand the total amount of ₱94,116.36, instead of the ₱21,331.79, incurring a shortage of ₱72,784.57.

A separate demand letter dated January 4, 1989 requiring the production of the missing funds was sent and received by petitioner on January 5, 1989. When asked by the auditing team as to the location of the missing funds, petitioner verbally explained that part of the money was used to pay for the loan of his late brother, another portion was spent for the food of his family, and the rest for his medicine.

As a result of the audit, Arlene R. Mandin prepared a memorandum dated January 13, 1989 addressed to the Provincial Auditor of Bohol recommending the filing of the appropriate criminal case against petitioner.

On January 16, 1989, petitioner remitted to the Office of the Provincial Treasurer of Bohol the amounts of ₱10,000.00 and ₱15,000.00, respectively. On February 14, 1989, petitioner again remitted to the Provincial Treasurer an additional amount of ₱35,000.00, followed by remittances made on February 16, 1989 in the amounts of ₱2,000.00 and ₱2,784.00.

An administrative case was filed against petitioner on February 13, 1989. He filed an Answer dated February 22, 1989 reiterating his earlier verbal admission before the audit team. Petitioner had then fully restituted his shortage in the amount of ₱72,784.57. Later, petitioner was charged before the Sandiganbayan with malversation of public funds, defined and penalized by Article 217 of the Revised Penal Code.

Pre-trial was initially set on June 4-5, 1990 but petitioner's counsel moved for postponement. The Sandiganbayan, however, proceeded to hear the case on June 5, 1990, as previously scheduled, due to the presence of prosecution witness Arlene R. Mandin, who came all the way from Bohol. On said date, the Sandiganbayan dispensed with pre-trial and allowed the prosecution to present its witness. Arlene R. Mandin testified. The defense presented evidence through petitioner Zenon R. Perez himself. He denied the contents of his first Answer to the administrative case filed against him by the audit team. He claimed it was prepared without the assistance of counsel and that at the time of its preparation and submission, he was not in peak mental and physical condition, having been stricken with diabetes mellitus.

Petitioner further testified that on July 30, 1989, he submitted his Position Paper before the Office of the Ombudsman, Cebu City and maintained that the alleged cash shortage was only due to oversight. Petitioner argued that the government did not suffer any damage or prejudice since the alleged cash shortage was actually deposited with the Office of the Provincial Treasurer.

The Sandiganbayan rendered a judgment of conviction. On September 23, 2004, petitioner resorted to the instant appeal.

ISSUE:

Whether the Honorable Sandiganbayan by unduly and unreasonably delaying the decision of the case for over thirteen (13) years violated the petitioner's right to speedy disposition of his case and due process. (NO)

RULING:

Petitioner asserts that his right to due process of law and to speedy disposition of his case was violated because the decision of the Sandiganbayan was handed down after the lapse of more than twelve years. The years that he had to wait for the outcome of his case were allegedly spent in limbo, pain and agony.

Due process of law as applied to judicial proceedings has been interpreted to mean "a law which hears before it condemns, which proceeds on inquiry, and renders judgment only after

trial." Petitioner cannot complain that his right to due process has been violated. He was given all the chances in the world to present his case, and the Sandiganbayan rendered its decision only after considering all the pieces of evidence presented before it.

Petitioner's claim of violation of his right to a speedy disposition of his case must also fail.

The 1987 Constitution guarantees the right of an accused to speedy trial. Both the 1973 Constitution in Section 16 of Article IV and the 1987 Constitution in Section 16 of Article III, Bill of Rights, are also explicit in granting to the accused the right to speedy disposition of his case.

In *Barker v. Wingo*, the United States Supreme Court was confronted for the first time with two "rigid approaches" on speedy trial as "ways of eliminating some of the uncertainty which courts experience protecting the right."

The first approach is the **"fixed-time period"** which holds the view that "the Constitution requires a criminal defendant to be offered a trial within a specified time period." The second approach is the **"demand-waiver rule"**which provides that "a defendant waives any consideration of his right to speedy trial for any period prior to which he has not demanded trial. Under this rigid approach, a prior demand is a necessary condition to the consideration of the speedy trial right."

The Court went on to adopt a middle ground: the **"balancing test,"** in which "the conduct of both the prosecution and defendant are weighed." Mr. Justice Powell, *ponente,* explained the concept, thus:

> **A balancing test necessarily compels courts to approach speedy trial cases on an *ad hoc* basis.** We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. **Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.**

Philippine jurisprudence has, on several occasions, adopted the balancing test.

We rule that petitioner was not deprived of his right to a speedy disposition of his case.

More important than the absence of serious prejudice, petitioner himself did not want a speedy disposition of his case. Petitioner was duly represented by counsel *de parte* in all stages of the proceedings before the Sandiganbayan. From the moment his case was deemed submitted for decision up to the time he was found guilty by the Sandiganbayan, however, petitioner has not filed a single motion or manifestation which could be construed even remotely as an indication that he wanted his case to be dispatched without delay.

Petitioner has clearly slept on his right. The matter could have taken a different dimension if during all those twelve years, petitioner had shown signs of asserting his right to a speedy disposition of his case or at least made some overt acts, like filing a motion for early resolution, to show that he was not waiving that right.

Pending his conviction by the Sandiganbayan, petitioner may have truly lived in suspicion and anxiety for over twelve years. However, any prejudice that may have been caused to him in all those

years was only minimal. The supposed gravity of agony experienced by petitioner is more imagined than real.

THE OMBUDSMAN, *Petitioner,* -versus- BEN C. JURADO, *Respondent.*
G.R. No. 154155, THIRD DIVISION, August 6, 2008, REYES, R.T, *J.*

It bears stressing that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

We find that respondent's right to the speedy disposition of cases has not been violated.

*There were **no vexatious, capricious, and oppressive delays** because he was not made to undergo any investigative proceeding prior to the report and findings of the FFB.*

Simply put, prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of – he was not made the subject of any complaint or made to undergo any investigation.

FACTS:

Sometime in 1992, Maglei Enterprises Co., (Maglei), filed an application before the Bureau of Customs for the operation of a Customs Bonded Warehouse (CBW)-Manufacturing Warehouse. As part of the evaluation of Maglei's application, CBW Supervisor Juanito A. Baliwag conducted an inspection of Maglei's compliance with structural requirements. Baliwag submitted a report recommending approval of the application.

On March 16, 1992, respondent Jurado, who was then the Chief of the Warehouse Inspection Division, adopted the recommendation of Baliwag. Then he indorsed the papers of Maglei to the Chief of the Miscellaneous Manufacturing Bonded Warehouse Division (MMBWD).

Maglei's application was submitted to Rolando A. Mendoza, Chief of the MMBWD for his comment and recommendation. In a Memorandum (for the District Collector of Customs) dated March 20, 1992, Mendoza reported that Maglei has substantially complied with the physical and documentary requirements relative to their application for the operation of a Customs Bonded Warehouse.

On June 25, 1992, Maglei was finally granted the authority to establish and operate CBW No. M-1467. By virtue of such authority, Maglei imported various textile materials which were then transferred to the said warehouse. The textiles were to be manufactured into car covers for exportation.

Subsequently, on July 8 and 22, 1992, MMBWD Senior Storekeeper Account Officer George O. Dizon was tasked by MMBWD Chief Mendoza to check and verify the status of Maglei's CBW. Dizon reported that the subject CBW was existing and operating. However, upon further verification by the Bureau of Customs, it was discovered that the purported CBW of Maglei did not exist at the alleged site in Caloocan City.

Further investigation revealed that Maglei's shipment of textile materials disappeared, without proof of the materials being exported or the corresponding taxes being paid.

The Bureau of Customs initiated a complaint against George P. Dizon, Rose Cuyos and John Elvin C. Medina for prosecution under the Tariff and Customs Code.

On August 2, 1999, the OMB dismissed the criminal complaint for falsification of public documents and violation of Section 3(e) of Republic Act (R.A.) No. 3019 and Section 3601 of the Tariff and Customs Code filed against respondent. The complaint was dismissed on the ground of lack of *prima facie* evidence to charge respondent of the crime. the CA reversed and set aside the questioned decision and resolution of the OMB.

ISSUE:

Whether or not respondent's right to speedy trial was violated. (NO)

RULING:

Article III, Section 16 of the Constitution provides that, *all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies*. The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings. Hence, under the Constitution, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice.
It bears stressing that although the Constitution guarantees the right to the speedy disposition of cases, it is a flexible concept. Due regard must be given to the facts and circumstances surrounding each case. The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays, or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

In determining whether or not the right to the speedy disposition of cases has been violated, this Court has laid down the following guidelines: (1) the length of the delay; (2) the reasons for such delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

We find that respondent's right to the speedy disposition of cases has not been violated.

There were **no *vexatious*, *capricious, and oppressive delays*** because he was not made to undergo any investigative proceeding prior to the report and findings of the FFB.

Simply put, prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of – he was not made the subject of any complaint or made to undergo any investigation.

Records reveal that on September 29, 1997, the FFB of the OMB recommended that respondent be criminally and administratively charged. Subsequently, the OMB approved the recommendation on October 17, 1997. Respondent submitted his counter-affidavit on February 2, 1998 and motion to dismiss on October 8, 1998 before the Administrative Adjudication Bureau of the OMB. On August 16, 1999, the AAB rendered a decision finding petitioner administratively liable for neglect of duty. More or less, a period of two (2) years lapsed from the fact-finding report and recommendation of the FFB until the time that the AAB rendered its assailed decision.

To our mind, the time it took the Ombudsman to complete the investigation can hardly be considered an unreasonable and arbitrary delay as to deprive respondent of his constitutional right to the speedy disposition of his case. Further, there is nothing in the records to show that said period was characterized by delay which was vexatious, capricious or oppressive. There was no inordinate delay amounting to a violation of respondent's constitutional rights. The assertion of respondent that there was a violation of his right to the speedy disposition of cases against him must necessarily fail.

PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- JONATHAN BESONIA, *Appellant.*
G.R. No. 151284-85, EN BANC, February 5, 2004, DAVIDE, JR., *J.*

We cannot subscribe to Besonia's claim that his confession and admissions during the searching inquiry were elicited in violation of his constitutional right not to be compelled to testify against himself. The right against self-incrimination is intended to prevent the State, with all its coercive powers, from extracting from the suspect testimony that may convict him and to avoid a person subjected to such compulsion to perjure himself for his own protection. It does not apply where, as in these cases, the testimony was freely and voluntarily given by the accused himself without any compulsion from the agents of the State. There is nothing in the records that would indicate that Besonia was forced, intimidated, or compelled by the trial court or by anybody into admitting the crimes. At any rate, his plea of guilty and confession or admissions during the searching inquiry cannot be the sole basis for his conviction.

FACTS:

Besonia was charged with murder in two separate informations. On 6 March 2001, before the start of the trial, Besonia, through his counsel Atty. Calixto Perez, manifested that he would enter a plea of guilty to the lesser offense of homicide. Thereafter, the trial court ordered the prosecution to begin presenting its evidence.

On 29 May 2001, Besonia manifested his desire to enter a plea of guilty to murder. Re-arraignment was then scheduled on 5 June 2001. On his re-arraignment, Besonia pleaded guilty to the two charges of murder. The trial court forthwith conducted a searching inquiry to determine the voluntariness and full comprehension of his plea.

After the prosecution had rested its case, the defense manifested that it would not present any evidence. On 26 June 2001, the trial court promulgated judgment which is now the subject of this automatic review.

ISSUE:

Whether the trial court erred by violating the constitutional right of [the] accused not to be compelled to testify against himself, and having so compelled him, rendered judgment sentencing him to death.

RULING:

Besonia argues that the finding of guilt by the trial court was based mainly on his confession, which is inadmissible for having been obtained in gross violation of his constitutional right against self-incrimination. Moreover, the prosecution endeavored to prove the charges for murder by evidence other than the testimonies of the proclaimed eyewitnesses. In the absence of evidence proving his guilt, he should be acquitted.

Besonia claims that his re-arraignment was "notoriously flawed" in that despite his endeavor to plead guilty to the lesser crime of homicide, the trial court paid no attention to it, thus depriving him of the opportunity to make such plea.

We do not find anything irregular in the re-arraignment on 5 June 2001. It complied with Section 1 of Rule 116 of the Revised Rules of Criminal Procedure, as amended. Before Besonia pleaded guilty to both charges, the two informations for murder were first read and translated to Ilonggo dialect, which was the language known to him.

The two informations, to which Besonia pleaded guilty, allege that the killing was attended by the qualifying circumstance of evident premeditation and the aggravating circumstance of use of an unlicensed firearm, which if proved would warrant the penalty of death. With such a plea of guilty to a capital offense, Section 3, Rule 116 of the Revised Rules of Criminal Procedure will apply.

A searching inquiry must focus on the voluntariness of the plea and the full comprehension by the accused of the consequences of the plea so that the plea of guilty can truly be said to be based on a free and informed judgment.

The trial court has substantially followed the aforementioned parameters for the conduct of a searching inquiry.

We cannot subscribe to Besonia's claim that his confession and admissions during the searching inquiry were elicited in violation of his constitutional right not to be compelled to testify against himself. The right against self-incrimination is intended to prevent the State, with all its coercive powers, from extracting from the suspect testimony that may convict him and to avoid a person subjected to such compulsion to perjure himself for his own protection. It does not apply where, as in these cases, the testimony was freely and voluntarily given by the accused himself without any compulsion from the agents of the State. There is nothing in the records that would indicate that Besonia was forced, intimidated, or compelled by the trial court or by anybody into admitting the crimes. At any rate, his plea of guilty and confession or admissions during the searching inquiry cannot be the sole basis for his conviction.

It must be stressed that a plea of guilty is only a supporting evidence or secondary basis for a finding of culpability, the main proof being the evidence presented by the prosecution to prove the accused's guilt beyond reasonable doubt. Once an accused charged with a capital offense enters a plea of guilty, a regular trial shall be conducted just the same as if no such plea was entered. The court cannot, and should not, relieve the prosecution of its duty to prove the guilt of the accused and the precise degree of his culpability by the requisite quantum of evidence.

In these cases, the trial court did not comply with the second requisite mentioned in Section 3 of Rule 116 of the Revised Rules of Criminal Procedure, which is to order the prosecution to prove the guilt of the accused and the precise degree of his culpability. It only required the prosecution to present evidence "to prove the guilt or degree of culpability of the accused for the use of [an] unlicensed firearm." Thus, the evidence presented by the prosecution were merely the testimonies of the police officers on the aggravating circumstance of use of unlicensed firearm in the commission of the crime, apart from those of the doctors on the injuries sustained by the victims. Doubtless, they are insufficient to establish the guilt of Besonia.

Apparently, the trial court and the prosecution unduly relied on Besonia's plea of guilty and his admissions made during the searching inquiry. The prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of Besonia. Its presentation of its case was lacking in assiduity that is necessarily expected in a prosecution for a capital offense; it was too meager to be accepted as being the standard constitutional due process at work enough to forfeit a human life. It has been held that where the plea of guilt to a capital offense has adversely influenced or impaired the presentation of the prosecution's case, the remand of the case to the trial court for further proceedings is imperative.

PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee,* -versus- ANACLETO Q. OLVIS, ROMULO VILLAROJO, LEONARDO CADEMAS and DOMINADOR SORELA, *Accused-appellant.*
G.R. No. 71092, SECOND DIVISION, September 30, 1987, SARMIENTO, *J.*

Forced re-enactments, like uncounselled and coerced confessions come within the ban against self-incrimination. Here, the accused is not merely required to exhibit some physical characteristics; by and large, he is made to admit criminal responsibility against his will. It is a police procedure just as condemnable as an uncounselled confession. Accordingly, we hold that all evidence based on such a re-enactment to be in violation of the Constitution and hence, incompetent evidence. It should be furthermore observed that the three accused-appellants were in police custody when they took part in the re-enactment in question. It is under such circumstances that the Constitution holds a strict application.

FACTS:

On September 9, 1975, Alfredo and Estrella Bagon, brother and sister, arrived at the local Integrated National Police station of Barrio Polanco, in Zamboanga del Norte, to report their brother, Deosdedit Bagon, missing. The station commander, Captain Ruperto Encabo, received their report.

Bagon had been in fact missing since two days before. He was last seen by his wife in the afternoon of September 7, 1975, on his way home to Sitio Sebaca where they resided. She did three probable places, but her efforts were in vain.

It was Captain Encabo himself who led a search party to mount an inquiry. As a matter of police procedure, the team headed off to Sitio Sebaca to question possible witnesses. There, Captain Encabo's men chanced upon an unnamed volunteer, who informed them that Deosdedit Bagon was last seen together with Dominador Sorela, one of the accused herein.

Sorela bore several scratches on his face, neck and arms when the police found him. According to him, he sustained those wounds while clearing his ricefield. Apparently unconvinced. Captain Encabo had Sorela take them to the ricefield where he sustained his injuries. But half way there, Sorela illegally broke down, and, in what would apparently crack the case for the police, admitted having participated in the killing of the missing Bagon.

The police soon picked up Villarojo and Cademas. Together with Sorela, they were turned over to the custody of Captain Encabo.

The necropsy report prepared by the provincial health officer disclosed that the deceased suffered twelve stab and hack wounds, six of which were determined to be fatal.

Initial findings of investigators disclosed that the threesome of Solero, Villarojo, and Cademas executed Discredit Bagon on orders of Anacleto Olvis, then Polanco municipal mayor, for a reward of P3,000.00 each.

While in custody, the three executed five separate written confessions each. Based on these subsequent statements, the court a quo rendered separate verdicts on the three accused on the one hand, and Anacleto Olvis on the other. As earlier stated Olvis was acquitted, while the three were all sentenced to die for the crime of murder.

With the acquittal of Olvis, we are left with the murder cases against the three accused-appellants. The accused-appellants subsequently repudiated their alleged confessions in open court alleging threats by the Polanco investigators of physical harm if they refused to "cooperate" in the solution of the case. They likewise alleged that they were instructed by the Polanco police investigators to implicate Anacieto Olvis in the case. They insisted on their innocence. The acused Romulo Villarojo averred, specifically, that it was the deceased who had sought to kill him, for which he acted in self-defense.

The murder of Deosdedit Bagon was witnessed by no other person. The police of Polanco had but the three accused-appellants' statements to support its claiming.

ISSUE:

Whether or not these statements, as any extrajudicial confession confronting us, can stand up in court. (NO)

RULING:

The confessions in the case at bar suffer from a Constitutional infirmity. In their supposed statements dated September 9, 14, and 21, 1975, the accused-appellants were not assisted by counsel when they "waived" their rights to counsel.

The lack of counsel "makes [those] statement[s], in contemplation of law, 'involuntary,' even if it were otherwise voluntary, technically."

With reset to the confessions of September 18, 197 5, while it is stated therein that this Office had just requested the services of Atty. NARVARO VELAR NAVARRO of the Citizens Legal Assistance Office, Department of Justice, Dipolog District Office, the same nonetheless call for a similar rejection. There is nothing there that would show that Atty. Navarro was the accused-appellants' counsel of choice (specifically, the appellant Romulo Villarojo who admitted therein having been the bolo-wielder). On the contrary, it is clear therefrom that Atty. Navarro was summoned by the NBI. He cannot therefore be said to have been acting on behalf of the accused-appellants when he lent his presence at the confession proceedings.

The accused-appellants were denied their right to counsel not once, but twice. We refer to the forced re-enactment of the crime the three accused were made to perform shortly after their apprehension.

Forced re-enactments, like uncounselled and coerced confessions come within the ban against self-incrimination. Here, the accused is not merely required to exhibit some physical characteristics; by and large, he is made to admit criminal responsibility against his will. It is a police procedure just as condemnable as an uncounselled confession. Accordingly, we hold that all evidence based on such a re-enactment to be in violation of the Constitution and hence, incompetent evidence. It should be furthermore observed that the three accused-appellants were in police custody when they took part in the re-enactment in question. It is under such circumstances that the Constitution holds a strict application.

Indeed, the three accused-appellants had languished in jail for one year and two months before the information was filed, and only after they had gone to court on an application for *habeas corpus*. For if the authorities truly had a case in their hands, we are puzzled why they, the accused, had to be made to suffer preventive imprisonment for quite an enormous length of time.

LITO C. MARCELO, *Petitioner*, -versus- THE HON. SANDIGANBAYAN (FIRST DIVISION) and THE PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 109242, SECOND DIVISION, January 26, 1999, MENDOZA, *J.*

The use of specimen handwriting in Beltran is different from the use of petitioner's signature in this case. In that case, the purpose was to show that the specimen handwriting matched the handwriting in the document alleged to have been falsified and thereby show that the accused was the author of the crime (falsification) while in this case the purpose for securing the signature of petitioner on the envelopes was merely to authenticate the envelopes as the ones seized from them. However, this purpose and petitioner's signatures on the envelope, when coupled with the testimony of prosecution witnesses that the envelopes seized from petitioner were those given to him and Romero, undoubtedly help establish the guilt of petitioner. Since these signatures are actually evidence of admission obtained from petitioner and his co-accused under circumstances contemplated in Art. III, §§12(1) and 17 of the

Constitution, they should be excluded. For indeed, petitioner and his co-accused signed following their arrest. Hence, they were at the time under custodial investigation…

However, the letters are themselves not inadmissible in evidence. The letters were validly seized from petitioner and Romero as an incident of a valid arrest. A ruling that petitioner's admission that the letters in question were those seized from him and his companion is inadmissible in evidence does not extend to the exclusion from evidence of the letters themselves. The letters can stand on their own, being the fruits of a crime validly seized during a lawful arrest. That these letters were the ones found in the possession of petitioner and his companion and seized from them was shown by the testimonies of witnesses. Indeed, petitioner and his co-accused were not convicted solely on the basis of the signatures found on the letters but on other evidence, notably the testimonies of NBI agents and other prosecution witnesses.

FACTS:

Lito Marcelo and several others were accused of qualified theft for stealing mail matters. They were arrested and brought to the NBI headquarters wherein unsorted mail was seized from them. Marcelo and company were asked to affix their signatures on the envelopes of the letters. They did so in the presence of the members of the NBI Administrative and Investigative Staff and the people transacting business with the NBI at that time. According to an NBI officer, they required the accused to do this in order to identify the letters as the very same letters confiscated from them. The three were charged with infidelity in the custody of documents. The case was later withdrawn and another information for qualified theft was filed before the Sandiganbayan, which found all the accused guilty beyond reasonable doubt as principals of the crime of qualified theft.

ISSUE:

Whether the letters that the accused were made to sign during custodial investigation without the assistance of counsel are admissible in evidence. (NO)

RULING:

Petitioner's counsel says that the signing of petitioner's and his co-accused's names was not a mere mechanical act but one which required the use of intelligence and therefore constitutes self-incrimination. Petitioner's counsel presumably has in mind the ruling in *Beltran v. Samson* to the effect that the prohibition against compelling a man to be a witness against himself extends to any attempt to compel the accused to furnish a specimen of his handwriting for the purpose of comparing it with the handwriting in a document in a prosecution for falsification. "Writing is something more than moving the body, or the hand, or the fingers; writing is not a purely mechanical act because it requires the application of intelligence and attention," so it was held.

To be sure, the use of specimen handwriting in *Beltran* is different from the use of petitioner's signature in this case. In that case, the purpose was to show that the specimen handwriting matched the handwriting in the document alleged to have been falsified and thereby show that the accused was the author of the crime (falsification) while in this case the purpose for securing the signature of petitioner on the envelopes was merely to authenticate the envelopes as the ones seized from them. However, this purpose and petitioner's signatures on the envelope, when coupled with the testimony of prosecution witnesses that the envelopes seized from petitioner were those given to him and Romero, undoubtedly help establish the guilt of petitioner. Since these signatures are actually

evidence of admission obtained from petitioner and his co-accused under circumstances contemplated in Art. III, §§12(1) and 17 of the Constitution, they should be excluded. For indeed, petitioner and his co-accused signed following their arrest. Hence, they were at the time under custodial investigation, defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in a significant way. Under the Constitution, among the rights of a person under custodial investigation is the right to have competent and independent counsel preferably of his own choice and if the person cannot afford the services of counsel, that he must be provided with one.

However, the letters are themselves not inadmissible in evidence. The letters were validly seized from petitioner and Romero as an incident of a valid arrest. A ruling that petitioner's admission that the letters in question were those seized from him and his companion is inadmissible in evidence does not extend to the exclusion from evidence of the letters themselves. The letters can stand on their own, being the fruits of a crime validly seized during a lawful arrest. That these letters were the ones found in the possession of petitioner and his companion and seized from them was shown by the testimonies of witnesses. Indeed, petitioner and his co-accused were not convicted solely on the basis of the signatures found on the letters but on other evidence, notably the testimonies of NBI agents and other prosecution witnesses.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- MARLON ORTILLAS Y GAMLANGA, *Appellant.*
G.R. No. 137666, SECOND DIVISION, May 20, 2004, AUSTRIA-MARTINEZ, *J.*

As the Court held in People vs. Rivera, to wit:

> *The right of a party to cross-examine a witness is embodied in Art. III, §14(2) of the Constitution which provides that the accused shall have the right to meet the witnesses face to face and in Rule 115, §1(f) of the Revised Rules of Criminal Procedure which states that, in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witness against him. The cross-examination of a witness is essential to test his or her credibility, expose falsehoods or half-truths, uncover the truth which rehearsed direct examination testimonies may successfully suppress, and demonstrate inconsistencies in substantial matters which create reasonable doubt as to the guilt of the accused and thus give substance to the constitutional right of the accused to confront the witnesses against him*

Under the peculiar facts and circumstances of the case, it is evident that appellant had not been given the opportunity to cross-examine the lone prosecution witness. In the absence of cross-examination, which is prescribed by statutory norm and jurisprudential precept, the direct examination of the witness should have been expunged from the records.

FACTS:

An information was filed against Marlon Ortillas for the crime of murder. On the trial on the merits, the prosecution presented Russel Guiraldo. The only other hearing that took place after the testimony of Guiraldo was on September 5, 1995 when NBI Medico-Legal Officer Roberto Garcia testified for the prosecution. All in all, the continuation of the hearing was postponed 13 times when the prosecution finally rested its case with the submission of its documentary evidence. Witness Guiraldo was never presented for cross-examination. The last time he was subpoenaed was for the hearing set on November 6, 1995, but records do not show that he appeared on said date. Although several

hearings were scheduled thereafter, Guiraldo was not subpoenaed anymore. The RTC convicted the accused.

ISSUE:

Whether the RTC deprived accused of his constitutional right to meet the witness face to face. (YES)

RULING:

Section 1(f), Rule 115 of the then prevailing Rules of Criminal Procedure provides:

> SECTION 1. Rights of the accused at the trial. – In all criminal prosecutions, the accused shall be entitled to the following rights:
>
> (f) To confront and cross-examine the witnesses against him at the trial.

Section 6, Rule 132 of the then prevailing Rules on Evidence provides:

> SEC. 6. Cross-examination; its purpose and extent. – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue.

As the Court held in *People vs. Rivera*, to wit:

> The right of a party to cross-examine a witness is embodied in Art. III, §14(2) of the Constitution which provides that the accused shall have the right to meet the witnesses face to face and in Rule 115, §1(f) of the Revised Rules of Criminal Procedure which states that, in all criminal prosecutions, the accused shall have the right to confront and cross-examine the witness against him. The cross-examination of a witness is essential to test his or her credibility, expose falsehoods or half-truths, uncover the truth which rehearsed direct examination testimonies may successfully suppress, and demonstrate inconsistencies in substantial matters which create reasonable doubt as to the guilt of the accused and thus give substance to the constitutional right of the accused to confront the witnesses against him.

Under the peculiar facts and circumstances of the case, it is evident that appellant had not been given the opportunity to cross-examine the lone prosecution witness. In the absence of cross-examination, which is prescribed by statutory norm and jurisprudential precept, the direct examination of the witness should have been expunged from the records.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- REY SUNGA, RAMIL LANSANG, INOCENCIO PASCUA, LITO OCTAC AND LOCIL CUI @ GINALYN CUYOS, ACCUSED, REY SUNGA, RAMIL LANSANG and INOCENCIO PASCUA, *Appellants.*
G.R. No. 126029, EN BANC, March 27, 2003, CARPIO MORALES, *J.*

Like Exhibit "A," Sunga's second extrajudicial admission-Exhibit "I" is inadmissible, due to the absence of counsel to assist him when he executed it before the NBI. Although Sunga declared in open court that he made such admission in connection with his desire to apply as state witness which admission he later

repudiated, this does not make Exhibit "I" admissible. Sunga was at the time still under detention at the NBI office and had been languishing in jail since his arrest. His desire to regain his freedom is not difficult to understand, he having lost it once due to his conviction for another crime. His admission which was done without the benefit of counsel consisted of answers to questions propounded by the investigating agent of the NBI and not of a unilateral declaration of his participation in the crime. To this Court, these conditions are constitutive of an atmosphere pervading that of a custodial investigation and necessitating the assistance of a ***competent*** *and* ***independent*** *counsel* ***of Sunga's choice*** *as a matter of right but which he had none.*

Any information or admission given by a person while in custody which may appear harmless or innocuous at the time without the competent assistance of an independent counsel must be struck down as inadmissible. Even if the confession contains a grain of truth or even if it had been voluntarily given, if it was made without the assistance of counsel, it is inadmissible.

FACTS:

In 1994, Rey Sunga, Ramil Lansang, Inocencio Pascua, Jr., and Lito Octac as principals, and Locil Cui alias Ginalyn Cuyos as accomplice were charged for the rape and murder of Jocelyn Tan. Upon arraignment all the accused pleaded not guilty.

The prosecution, after presenting several witnesses, filed a motion to discharge accused Locil Cui to be a state witness, averring therein that the legal requisites for her discharge had been complied with, and submitting her sworn statement which detailed how her co-accused carried out the crime.
The prosecution adduced documentary evidence consisting mainly of two supposed extrajudicial confessions (Exhibit "A") made by Sunga. In a sworn statement which was executed before SPO2 Jose Janoras. The sworn statement bears Sunga's signature and that of his assisting counsel, Atty. Agustin Rocamora, Puerto Princesa City Legal Officer.

Subsequently, Sunga executed another sworn statement (Exhibit "I") before Special Investigator Reynaldo Abordo of the Puerto Princesa office of the National Bureau of Investigation. Exhibit "I" varied in a number of respects from Exhibit "A."

The trial court convicted Sunga and Lansang as principals of the crime of Rape with Homicide and sentenced each to suffer the penalty of DEATH, and Pascua as principal in the crime of Rape.

ISSUE:

Whether Sunga's admissions are admissible in evidence against him. (NO)

RULING:

The right to counsel was denied Sunga during his execution of Exhibit "A" - admission before the police on the ground that the counsel who assisted him, Atty. Agustin Rocamora, was the City Legal Officer of Puerto Princesa.

In *People v. Bandula*, this Court made it sufficiently clear that the independent counsel for the accused in custodial investigations cannot be a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose interest is admittedly adverse to the accused. A legal officer of

the city, like Atty. Rocamora, provides legal aid and support to the mayor and the city in carrying out the delivery of basic services to the people, which includes maintenance of peace and order and, as such, his office is akin to that of a prosecutor who unquestionably cannot represent the accused during custodial investigation due to conflict of interest. That Sunga chose him to be his counsel, even if true, did not render his admission admissible. Being of a very low educational attainment, Sunga could not have possibly known the ramifications of his choice of a city legal officer to be his counsel. The duty of law enforcers to inform him of his Constitutional rights during custodial interrogations to their full, proper and precise extent does not appear to have been discharged.

Noteworthy is the fact that nothing in the records shows that Atty. Rocamora exerted efforts to safeguard Sunga's rights and interests, especially that of his right not to be a witness against himself. In fact, glaringly, **Atty. Rocamora was not even made to testify** so he could have related the extent of legal assistance he extended to Sunga at the police station.

Atty. Rocamora did not, if at all, fully apprise Sunga of his rights and options prior to giving his (Sunga's) admission. Evidently, Atty. Rocamora, without more, merely acted to facilitate the taking of the admission from Sunga.

Moreover, that Sunga was first questioned by SPO4 Pantollano and Patrolman Bolos before he was investigated by SPO2 Janoras does not escape the attention of this Court. Although Sunga failed to present evidence as to the maltreatment he claimed to have suffered in the hands of SPO4 Pantollano and Patrolman Bolos, he did not have any lawyer by his side at the time these two policemen started asking him questions about Jocelyn's death. At that point, Sunga was already under custodial investigation without the assistance of counsel.

Custodial investigation is the stage "where the police investigation is no longer a general inquiry into an unsolved crime but ***has begun to focus on a particular suspect taken into custody by the police who carry out a process of interrogation that lends itself to elicit incriminating statements***. Under such circumstances, this Court cannot but entertain serious misgivings as to the admission Sunga subsequently gave to SPO2 Janoras.

Like Exhibit "A," Sunga's second extrajudicial admission-Exhibit "I" is inadmissible, due to the absence of counsel to assist him when he executed it before the NBI. Although Sunga declared in open court that he made such admission in connection with his desire to apply as state witness which admission he later repudiated, this does not make Exhibit "I" admissible. Sunga was at the time still under detention at the NBI office and had been languishing in jail since his arrest. His desire to regain his freedom is not difficult to understand, he having lost it once due to his conviction for another crime. His admission which was done without the benefit of counsel consisted of answers to questions propounded by the investigating agent of the NBI and not of a unilateral declaration of his participation in the crime. To this Court, these conditions are constitutive of an atmosphere pervading that of a custodial investigation and necessitating the assistance of a **competent** and **independent** counsel **of Sunga's choice** as a matter of right but which he had none.

Any information or admission given by a person while in custody which may appear harmless or innocuous at the time without the competent assistance of an independent counsel must be struck down as inadmissible. Even if the confession contains a grain of truth or even if it had been voluntarily given, if it was made without the assistance of counsel, it is inadmissible.

The waiver by Sunga of his right to counsel as contained in his sworn statement-Exhibit "I" was not a valid waiver for, on its face, it was executed not in the presence of counsel, contrary to the express requirement of the Constitution.

Sunga having had no counsel when he made his admission before the NBI and his waiver of the right to have one being invalid, his statement- Exhibit "I" is inadmissible.

The **right to counsel involves more than just the presence of a lawyer** in the courtroom or the mere propounding of standard questions and objections; rather it means **an efficient** and **decisive legal assistance** and not a simple perfunctory representation. As in *People v. Abano* where the confession by the therein accused in the preliminary investigation was excluded as inadmissible due to the absence of her counsel, this Court will not admit Sunga's. This makes it unnecessary to discuss and emphasize the conflict on material points of Sunga's and Locil's accounts of the incident.

PEOPLE OF THE PHILIPPINES, *Appellee*, - versus - JERRY RAPEZA Y FRANCISCO, *Appellant.*
G.R. No. 169431 (FORMERLY G.R. NOS. 149891-92),
SECOND DIVISION, April 04, 2007, TINGA, *J.*

The standards of "competent counsel" were not met in this case. Although Atty. Reyes signed the confession as appellant's counsel and he himself notarized the statement, there is no evidence on how he assisted appellant. The confession itself and the testimonies of SPO2 Gapas and SPO2 Cuizon bear no indication that Atty. Reyes had explained to appellant his constitutional rights. Atty. Reyes was not even presented in court to testify thereon whether on direct examination or on rebuttal. It appears that his participation in the proceeding was confined to the notarization of appellant's confession. Such participation is not the kind of legal assistance that should be accorded to appellant in legal contemplation.

Furthermore, Atty. Reyes was not appellant's counsel of choice but was picked out by the police officers allegedly through the barangay officials. Appellant's failure to interpose any objection to having Atty. Reyes as his counsel cannot be taken as consent under the prevailing circumstances. As discussed earlier, appellant was not properly informed of his rights, including the right to a counsel preferably of his own choice.

FACTS:

An unidentified woman went to the Culion Municipal Station and reported a killing that had taken place, alleging that she saw two bloodied bodies. Upon information supplied by a certain Mr. Dela Cruz that appellant-accused Jerry Rapeza had wanted to confess to the crimes, SPO2 Gapas set out to look for appellant; and when found, appellant expressed his willingness to make a confession in the presence of a lawyer. Appellant was then brought to the police station after which SPO2 Gapas requested Kagawad Alcantara to provide appellant with a lawyer. The following day, appellant was brought to the house of Atty. Reyes, the only available lawyer in the municipality. There, accused made an extrajudicial confession admitting the crime charged against him. A complaint for multiple murder was filed against appellant. On the basis of appellant's extrajudicial confession, the RTC found him guilty of both crimes. The CA upheld the trial court.

ISSUE:

Whether appellant's extrajudicial confession is admissible in evidence. (NO)

RULING:

Appellant was not informed if his constitutional rights in custodial investigation. He was being held as a suspect when he went with the police; he should have been informed of his constitutional rights at that moment and not when he was brought to the residence of the attorney. Assuming arguendo that the custodial investigation took place only in the residence of Atty. Reyes, a review of the records reveals that the taking of appellant's confession was flawed nonetheless. There is no showing that appellant had actually understood his rights. He was not even informed that he may waive such rights only in writing and in the presence of counsel. At the time of the investigation appellant was illiterate and was not well versed in Tagalog. This fact should engender a higher degree of scrutiny in determining whether he understood his rights as allegedly communicated to him, as well as the contents of his alleged confession.

The standards of "competent counsel" were not met in this case. Although Atty. Reyes signed the confession as appellant's counsel and he himself notarized the statement, there is no evidence on how he assisted appellant. The confession itself and the testimonies of SPO2 Gapas and SPO2 Cuizon bear no indication that Atty. Reyes had explained to appellant his constitutional rights. Atty. Reyes was not even presented in court to testify thereon whether on direct examination or on rebuttal. It appears that his participation in the proceeding was confined to the notarization of appellant's confession. Such participation is not the kind of legal assistance that should be accorded to appellant in legal contemplation.

Furthermore, Atty. Reyes was not appellant's counsel of choice but was picked out by the police officers allegedly through the barangay officials. Appellant's failure to interpose any objection to having Atty. Reyes as his counsel cannot be taken as consent under the prevailing circumstances. As discussed earlier, appellant was not properly informed of his rights, including the right to a counsel preferably of his own choice.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- WARLITO TOLENTINO Y LAQUIN, *Appellant.*
G.R. No. 139351, EN BANC, February 23, 2004, QUISUMBING, *J.*

Without firm basis is appellant's claim that his rights under Article III, Section 12 of the Constitution were violated when he was made to join the police line-up. In Gamboa v. Cruz, the SC held that a police line-up was not part of the custodial inquest, inasmuch as the accused therein was not yet being investigated and hence, the right to counsel had not yet attached. This ruling was affirmed in People v. Loveria and People v. De Guzman. Both held that where the accused was not being investigated by the police, when the witness was in the process of identifying him, his right to counsel was not violated. The reason is that at that stage, he was not entitled to the constitutional guarantee invoked.

FACTS:

In the information filed by the Provincial Prosecutor of Isabela, appellant Tolentino was charged with rape. In identifying appellant, he was asked to join the line-up. He was then identified by victim Mylene Mendoza. The RTC found the prosecution's evidence weighty and worthy of belief, and accordingly convicted appellant of the offense charged.

Tolentino avers that his identification by Mylene at the police line-up is unreliable since she was merely coached into pointing at him by her aunt. He also contends that his constitutional rights were violated when the police required him to join the line-up.

ISSUE:

Whether appellant's rights were violated when the police required him to join the line-up without the assistance of counsel. (NO)

RULING:

Without firm basis is appellant's claim that his rights under Article III, Section 12 of the Constitution were violated when he was made to join the police line-up. In *Gamboa v. Cruz,* the SC held that a police line-up was not part of the custodial inquest, inasmuch as the accused therein was not yet being investigated and hence, the right to counsel had not yet attached. This ruling was affirmed in *People v. Loveria* and *People v. De Guzman*. Both held that where the accused was not being investigated by the police, when the witness was in the process of identifying him, his right to counsel was not violated. The reason is that at that stage, he was not entitled to the constitutional guarantee invoked.

Appellant attaches great emphasis on his identification at the police line-up. Yet, there is no law requiring a police line-up as essential to a proper identification. In this case, any doubt as to his identification at the police line-up was dispelled by Mylene who identified in open court the appellant as the malefactor.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- EDEN DEL CASTILLO, *Appellant.*
G.R. No. 153254, SECOND DIVISION, September 30, 2004, AUSTRIA-MARTINEZ, *J.*

The appellant was the victim of a clever ruse to make her sign these alleged receipts which in effect are extra-judicial confessions of the commission of the offense. It is unusual for appellant to be made to sign receipts for what were taken from her. It is the police officers who should have signed such receipts. This is a violation of the constitutional right of the appellant to remain silent whereby she was made to admit the commission of the offense without informing her of his right. The Inventory Receipt signed by appellant is thus not only inadmissible for being violative of appellant's custodial right to remain silent, it is also an indicium of the irregularity in the manner by which the raiding team conducted the search of appellant's residence.

FACTS:

A search warrant was issued by Judge Dicdican authorizing the search and seizure of shabu and drug paraphernalia in appellant Eden Del Castillo's house. The police officers entered the house, saw appellant and served the warrant on her. Appellant was with her grandmother, the registered owner of the house, and her brother, in the living room. The police officers "pressed" them by telling them not to move and they were asked to just sit down while the search was on-going. Upon finding some packed crystalline substance, appellant was arrested and informed of her constitutional rights, specifically, the right to counsel to which she replied that she has a lawyer who will represent her. PO3 Petallar prepared an inventory of the seized articles and appellant was made to sign the same.

PO3 Bauzon and PO3 Petallar explained that the inventory receipt was dated July 24, 2000 although the raid was conducted on July 31 because their office had earlier prepared the blank form. The RTC rendered its assailed decision finding appellant guilty.

ISSUE:

Whether the appellant's constitutional right was violated when she was asked to sign the inventory receipt without the assistance of counsel. (YES)

RULING:

Appellant signed the receipt without the assistance of counsel. It was established that at the time she signed the receipt, she was already under custodial investigation. The testimony of PO3 Petallar reveals such fact. While PO3 Petallar testified that appellant was read her constitutional right, it was not clearly shown that she was informed of her right not to sign the receipt and that it can be used as an evidence against her. If appellant was indeed informed of her constitutional right, it is unusual for her to sign the receipt acknowledging ownership of the seized items without the assistance of counsel considering that she wanted to get a lawyer.

The appellant was the victim of a clever ruse to make her sign these alleged receipts which in effect are extra-judicial confessions of the commission of the offense. It is unusual for appellant to be made to sign receipts for what were taken from her. It is the police officers who should have signed such receipts. This is a violation of the constitutional right of the appellant to remain silent whereby she was made to admit the commission of the offense without informing her of his right. The Inventory Receipt signed by appellant is thus not only inadmissible for being violative of appellant's custodial right to remain silent, it is also an indicium of the irregularity in the manner by which the raiding team conducted the search of appellant's residence.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- JONAS GUILLEN Y ATIENZA, *Accused-Appellant.*
G.R. No. 191756, SECOND DIVISION, November 25, 2013, DEL CASTILLO, *J.*

Clearly, when appellant remained silent when confronted by the accusation of "AAA" at the police station, he was exercising his basic and fundamental right to remain silent. At that stage, his silence should not be taken against him. Thus, it was error on the part of the trial court to state that appellant's silence should be deemed as implied admission of guilt. In fact, this right cannot be waived except in writing and in the presence of counsel and any admission obtained in violation of this rule shall be inadmissible in evidence.

FACTS:

AAA was in her room playing cards while waiting for her husband when their neighbor Guillen knocked on the door. The latter poked a balisong on her neck and raped her. After the incident, AAA sought the help of her sister-in-law. Guillen was immediately arrested. The RTC found the accused guilty based on his silence at the police station which was deemed to be an implied admission of guilt.

ISSUE:

Whether Guillen's silence is an implied admission of guilt. (NO)

RULING:

When appellant was brought to the police station, he was a suspect for rape and was already under custodial investigation. As such, he was already under custodial investigation. Section 12, Article III of the Constitution explicitly provides, viz:

> Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Clearly, when appellant remained silent when confronted by the accusation of "AAA" at the police station, he was exercising his basic and fundamental right to remain silent. At that stage, his silence should not be taken against him. Thus, it was error on the part of the trial court to state that appellant's silence should be deemed as implied admission of guilt. In fact, this right cannot be waived except in writing and in the presence of counsel and any admission obtained in violation of this rule shall be inadmissible in evidence.

In any case, we agree with the Decision of the trial court, as affirmed by the CA, finding appellant guilty of the crime of rape. The trial court's Decision convicting appellant of rape was anchored not solely on his silence and so-called implied admission. More importantly, it was based on the testimony of "AAA" which, standing alone, is sufficient to establish his guilt beyond reasonable doubt.

CARLOS L. TANENGGEE, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent.*
G.R. No. 179448, SECOND DIVISION, June 26, 2013, DEL CASTILLO, *J.*

The constitutional proscription against the admissibility of admission or confession of guilt obtained in violation of Section 12, Article III of the Constitution, as correctly observed by the CA and the OSG, is applicable only in custodial interrogation.

The right to counsel "applies only to admissions made in a criminal investigation but not to those made in an administrative investigation."

Here, petitioner's written statement was given during an administrative inquiry conducted by his employer in connection with an anomaly/irregularity he allegedly committed in the course of his employment. No error can therefore be attributed to the courts below in admitting in evidence and in giving due consideration to petitioner's written statement as there is no constitutional impediment to its admissibility.

FACTS:

Petitioner Carlos Tanenggee was the manager of a Branch of Metrobank. He prepared and filled up a Metrobank Promissory Note in the name of Romeo Tan forging on top of said name the signature of Romeo Tan, affixing his own signature at the left bottom thereof purportedly to show that he witnessed the alleged signing of the said note by Romeo Tan. He also prepared a Metrobank cashier's check with Romeo Tan as payee. He forged at the back thereof the signature of said Romeo Tan,

thereby making it appear that Romeo Tan had participated in the preparation, execution and signing of the said Promissory Note and the signing and endorsement of the said check.

He handed the checks to the Loans clerk for encashment. He obtained from Metrobank the proceeds of the alleged loan and misappropriated the same to his use and benefit.

After the discovery of the irregular loans, an internal audit was conducted and an administrative investigation was held in the Head Office of Metrobank, during which appellant signed a written statement in the form of questions and answers. The accused was charged with estafa through falsification. The RTC found the accused guilty of five counts of estafa through falsification.

While he admits signing a written statement, petitioner refutes the truth of the contents thereof and alleges that he was only forced to sign the same without reading its contents. He asserts that said written statement was taken in violation of his rights under Section 12, Article III of the Constitution, particularly of his right to remain silent, right to counsel, and right to be informed of the first two rights. Hence, the same should not have been admitted in evidence against him.

ISSUE:

Whether petitioner's written statement is admissible in evidence. (YES)

RULING:

The constitutional proscription against the admissibility of admission or confession of guilt obtained in violation of Section 12, Article III of the Constitution, as correctly observed by the CA and the OSG, is applicable only in custodial interrogation.

The right to counsel "applies only to admissions made in a criminal investigation but not to those made in an administrative investigation." Amplifying further on the matter, the Court made clear in the recent case of Carbonel v. Civil Service Commission:

> However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.

Here, petitioner's written statement was given during an administrative inquiry conducted by his employer in connection with an anomaly/irregularity he allegedly committed in the course of his employment. No error can therefore be attributed to the courts below in admitting in evidence and in giving due consideration to petitioner's written statement as there is no constitutional impediment to its admissibility.

ESTRELLA TAGLAY, *Petitioner*, -versus- JUDGE MARIVIC TRABAJO DARAY and LOVERIE PALACAY, *Respondents.*
G.R. No. 164258, THIRD DIVISION, August 22, 2012, PERALTA, *J.*

It is true that petitioner was arraigned by the MCTC. However, the MCTC has no jurisdiction over the subject matter of the present case. It is settled that the proceedings before a court or tribunal without

jurisdiction, including its decision, are null and void. Considering that the MCTC has no jurisdiction, all the proceedings conducted therein, including petitioner's arraignment, are null and void. Thus, the need for petitioner's arraignment on the basis of a valid Information filed with the RTC.

It is also true that petitioner's counsel participated in the proceedings held before the RTC without objecting that his client had not yet been arraigned. However, it is wrong for the RTC to rely on the case of People v. Cabale, because the accused therein was in fact arraigned, although the same was made only after the case was submitted for decision. In the similar cases of People v. Atienza and Closa and People v. Pangilinan, the accused in the said cases were also belatedly arraigned. The Court, in these three cases, held that the active participation of the counsels of the accused, as well as their opportunity to cross-examine the prosecution witnesses during trial without objecting on the ground that their clients had not yet been arraigned, had the effect of curing the defect in the belated arraignment. Moreover, the accused in these cases did not object when they were belatedly arraigned. The same, however, cannot be said in the instant case. There is no arraignment at all before the RTC. On the other hand, the arraignment conducted by the MCTC is null and void. Thus, there is nothing to be cured. Petitioner's counsel also timely raised before the RTC the fact that her client, herein petitioner, was not arraigned.

FACTS:

Petitioner Estrella Taglay was charged with Qualified Trespass to Dwelling before the Municipal Circuit Trial Court (MCTC) of Davao Del Sur. After petitioner was arraigned and pleaded not guilty, the MCTC issued an order to transfer the case to the RTC because the complainant was a minor. Section 5 (a) of R.A. 8369 or the Family Courts Act of 1997 clearly provides that Family Courts have exclusive original jurisdiction over criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or **where one or more of the victims is a minor at the time of the commission of the offense**.

Prior to the presentation of the final witness for the prosecution, petitioner filed a Motion to Dismiss on the ground of lack of jurisdiction. Petitioner contended that the RTC did not acquire jurisdiction over the case, because the MCTC erroneously transferred the case to the RTC instead of dismissing it. also argued that the RTC's lack of jurisdiction was further aggravated when she was not arraigned before the RTC.

The RTC ruled that it had acquired jurisdiction over the case when it received the records of the case as a consequence of the transfer effected by the MCTC. The RTC also held that even granting that there was defect or irregularity in the procedure because petitioner was not arraigned before the RTC, such defect was fully cured when petitioner's counsel entered into trial without objecting that his client had not yet been arraigned. Furthermore, the RTC noted that petitioner's counsel has cross-examined the witnesses for the prosecution. Consequently, the RTC denied petitioner's Motion to Dismiss.

ISSUE:

Whether the accused should have been arraigned anew before the RTC and that her arraignment before the MCTC does not count because the proceedings conducted therein were void. (YES)

RULING:

It is true that petitioner was arraigned by the MCTC. However, the MCTC has no jurisdiction over the subject matter of the present case. It is settled that the proceedings before a court or tribunal without jurisdiction, including its decision, are null and void. Considering that the MCTC has no jurisdiction, all the proceedings conducted therein, including petitioner's arraignment, are null and void. Thus, the need for petitioner's arraignment on the basis of a valid Information filed with the RTC.

It is also true that petitioner's counsel participated in the proceedings held before the RTC without objecting that his client had not yet been arraigned. However, it is wrong for the RTC to rely on the case of *People v. Cabale*, because the accused therein was in fact arraigned, although the same was made only after the case was submitted for decision. In the similar cases of *People v. Atienza* and Closa and *People v. Pangilinan*, the accused in the said cases were also belatedly arraigned. The Court, in these three cases, held that the active participation of the counsels of the accused, as well as their opportunity to cross-examine the prosecution witnesses during trial without objecting on the ground that their clients had not yet been arraigned, had the effect of curing the defect in the belated arraignment. Moreover, the accused in these cases did not object when they were belatedly arraigned. The same, however, cannot be said in the instant case. There is no arraignment at all before the RTC. On the other hand, the arraignment conducted by the MCTC is null and void. Thus, there is nothing to be cured. Petitioner's counsel also timely raised before the RTC the fact that her client, herein petitioner, was not arraigned.

Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. The purpose of arraignment is, thus, to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him. As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily. Otherwise, absence of arraignment results in the nullity of the proceedings before the trial court.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- ALFREDO PANGILINAN y TRINIDAD, *Accused-Appellant.*
G.R. No. 171020, EN BANC, March 14, 2007, CHICO-NAZARIO, *J.*

Appellant's belated arraignment did not prejudice him. This procedural defect was cured when his counsel participated in the trial without raising any objection that his client had yet to be arraigned. His counsel even cross-examined the prosecution witnesses. His counsel's active participation in the hearings is a clear indication that he was fully aware of the charges against him; otherwise, his counsel would have objected and informed the court of this blunder.
FACTS:

Respondent Alfredo Pangilinan was charged for the rape of her daughter. After the evidence of the prosecution have been presented, the trial court, having discovered that Pangilinan had not yet been arraigned, scheduled his arraignment. The trial court convicted appellant of two counts of rape and imposed on him the capital punishment for each count.

Appellant assails his conviction because he was not properly arraigned. Since he was arraigned only after the case was submitted for decision, said irregularity, he argues, is a procedural error which is prejudicial to the appellant and is tantamount to denial of his constitutional right to be informed of the accusation against him. He claims that his subsequent arraignment did not cure the defect in the

trial proceedings because at the time the petition for bail was heard, the trial court had not yet acquired jurisdiction over his person.

ISSUE:

Whether the right of the accused to be informed of the nature and cause of the accusation against him violated. (NO)

RULING:

No. Admittedly, appellant was arraigned after the case was submitted for decision. The question is: Were appellant's rights and interests prejudiced by the fact that he was arraigned only at this stage of the proceedings? The Court does not think so. Appellant's belated arraignment did not prejudice him. This procedural defect was cured when his counsel participated in the trial without raising any objection that his client had yet to be arraigned. His counsel even cross-examined the prosecution witnesses. His counsel's active participation in the hearings is a clear indication that he was fully aware of the charges against him; otherwise, his counsel would have objected and informed the court of this blunder. Moreover, no protest was made when appellant was subsequently arraigned. The parties did not question the procedure undertaken by the trial court. It is only now, after being convicted and sentenced to two death sentences, that appellant cries that his constitutional right has been violated. It is already too late to raise this procedural defect.

ANTONIO GAMAS AND FLORENCIO SOBRIO, *Complainants,* -versus- JUDGE ORLANDO A. OCO, IN HIS CAPACITY AS PRESIDING JUDGE OF MUNICIPAL TRIAL COURT, POLOMOLOK, SOUTH COTABATO AND PNP SPO4 WILLIE ADULACION IN HIS CAPACITY AS PUBLIC PROSECUTOR OF MTC-POLOMOLOK, SOUTH COTABATO, *Respondents.*
A.M. No. MTJ-99-1231, March 17, 2004, CARPIO, *J.*

In People v. Bodoso, the Court ruled that the only instance when the court can arraign an accused without the benefit of counsel is if the accused waives such right and the court, finding the accused capable, allows him to represent himself in person. However, to be a valid waiver, the accused must make the waiver voluntarily, knowingly, and intelligently.

After reviewing the records and taking into account the circumstances obtaining in this case, we find that respondent judge did not properly apprise complainants of their right to counsel prior to their arraignment. Consequently, there was no basis for complainants' alleged waiver of such right. In his Answer, respondent judge does not deny that when he "arraigned" complainants, no lawyer assisted the complainants. However, respondent judge asserted that the attendance of a "*lawyer was their (complainants') problem*." Respondent judge stated that before arraigning complainants, he gave a "discourse [of] their rights as accused." Respondent judge also stated that since the police caught complainants in flagrante delicto, complainants told him "a lawyer would not have much use." Respondent judge further stated that complainants "*expressed that they have no money to pay for a lawyer*." Respondent judge informed complainants "he can give them a PAO lawyer" if they so desired. However, respondent judge did not appoint a PAO lawyer despite being informed by complainants that they could not afford a lawyer.

FACTS:

Antonio Gamas and Florencio Sobrio were charged of the crime of Theft before the sala of Judge Orlando A. Oco. They alleged that SPO4 Adulacion enticed them to plead guilty, apply for probation to avoid imprisonment. Adulacion had a prepared draft and showed it to the Judge. Thereafter, the judge ordered his clerk to have the order signed by the accused. They signed the document upon Adulacion's assurance that once the police apprehend the rest of the accused the police will revive the case and respondent Adulacion will present complainants as "star witnesses." Complainants later found out that what they signed was an Order finding them guilty of theft and sentencing them each to imprisonment for six (6) months and one (1) day. Gamas and Sobrio filed an administrative case against Judge Oco and SPO4 Adulacion. The investigating judge found Judge Oco liable for simple neglect of duty and imposed a fine of P10,000. OCA found the judge guilty of gross ignorance of the law and fined him P20,000.

ISSUE:

Whether complainants were properly arraigned?

RULING:

No.

The Constitution mandates that "[I]n all criminal prosecutions, the accused shall x x x enjoy the right to be heard by himself and counsel." Indeed, the accused has a right to representation by counsel from the custodial investigation all the way up to the appellate proceedings. At the arraignment stage, Section 6 of Rule 116 of the Revised Rules of Criminal Procedure provides:

> SEC. 6. Duty of court to inform accused of his right to counsel. Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed counsel of his choice, the court must assign a counsel de oficio to defend him.

Compliance with these four duties is mandatory. The only instance when the court can arraign an accused without the benefit of counsel is if the accused waives such right and the court, finding the accused capable, allows him to represent himself in person. However, to be a valid waiver, the accused must make the waiver voluntarily, knowingly, and intelligently. In determining whether the accused can make a valid waiver, the court must take into account all the relevant circumstances, including the educational attainment of the accused. In the present case, however, respondent judge contends that complainants waived their right to counsel and insisted on their immediate arraignment.

After reviewing the records and taking into account the circumstances obtaining in this case, we find that respondent judge did not properly apprise complainants of their right to counsel prior to their arraignment. Consequently, there was no basis for complainants' alleged waiver of such right. In his Answer, respondent judge does not deny that when he "arraigned" complainants, no lawyer assisted the complainants. However, respondent judge asserted that the attendance of a "*lawyer was their (complainants') problem*." Respondent judge stated that before arraigning complainants, he gave a "discourse [of] their rights as accused." Respondent judge also stated that since the police caught complainants in flagrante delicto, complainants told him "a lawyer would not have much use." Respondent judge further stated that complainants "*expressed that they have no money to pay for a lawyer*." Respondent judge informed complainants "he can give them a PAO lawyer" if they so desired.

However, respondent judge did not appoint a PAO lawyer despite being informed by complainants that they could not afford a lawyer.

These do not amount to compliance with Section 6 of Rule 116. Respondent judge has the duty to insure that there is no violation of the constitutional right of the accused to counsel. Respondent judge is grossly mistaken in saying that securing a "lawyer was their (complainants') problem." Once the accused informs the judge that he cannot afford a lawyer and the court has not allowed the accused to represent himself, or the accused is incapable of representing himself, the judge has the duty to appoint a counsel *de oficio* to give meaning and substance to the constitutional right of the accused to counsel.

Respondent judge knew that complainants are mere tricycle drivers. Respondent judge could not have expected complainants to be conversant with the rules on criminal procedure.[15] Respondent judge should not only have followed Section 6 of Rule 116 to the letter, but should also have ascertained that complainants understood the import of the proceedings. Respondent judge should not have proceeded with complainants' arraignment until he had ascertained that complainants' waiver of their right to counsel was made voluntarily, knowingly, and intelligently and that they were capable of representing themselves.

PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- MELITON JALBUENA y TADIOSA, *Appellant.*
G.R. NO. 171163, EN BANC, July 04, 2007, CARPIO MORALES, *J.*

The Court in People v. Espinosa ruled that:

> *Indeed, in the case at bar, the criminal complaint states that the rape was committed "on or about the month of August 1996." Such an allegation in the criminal complaint as to the time of the offense was committed is sufficient compliance with the provisions of Section 11, Rule 110 of the Revised Rules of Criminal Procedure. Besides, if the appellant was of the belief that the criminal complaint was defective, he should have filed a motion for a bill of particulars with the trial court before his arraignment. The appellant failed to do so. It was only when the case was brought to this Court on automatic review that he raised the question of the supposed insufficiency of the criminal complaint, which is now too late by any reckoning.*

At all events, accused-appellant participated in the trial and never objected to the presentation of evidence by the prosecution that the rape was committed "on or about the month of August 1996." Appellant likewise never objected to the presentation of evidence by the prosecution to prove that the offenses were committed "on or about sometime (sic) 1987, prior and subsequent thereto."

FACTS:

While her mother BBB was out of the house, her father, accused-appellant, approached AAA and raped her. The incident was repeated on two other occasions, the last of which was in the morning and witnessed by her uncle CCC while accused-appellant was on top of her. CCC reported what he saw to AAA's grandfather who merely advised her to avoid her father, to an aunt, as well as to her mother BBB who refused to believe it. AAA later narrated her ordeals to two classmates who reported them to their teacher, who in turn reported and brought her to the school principal. Jalbuena was then charged of statutory rape. The information charging Jalbuena with the offense states August 1996 and not the exact date of commission. The RTC nonetheless found him guilty of statutory rape.

ISSUE:

Whether the accused was arraigned properly?

RULING:

Yes.

If accused-appellant found the information defective as it bears only the month and year of the incident complained of, he should have filed a Motion for Bill of Particulars, as provided for under Rule 116, before he entered a plea. His failure to do so amounted to a waiver of the defect or detail desired in the information. The Court in People v. Espinosa ruled that:

> Indeed, in the case at bar, the criminal complaint states that the rape was committed "on or about the month of August 1996." Such an allegation in the criminal complaint as to the time of the offense was committed is sufficient compliance with the provisions of Section 11, Rule 110 of the Revised Rules of Criminal Procedure. Besides, if the appellant was of the belief that the criminal complaint was defective, he should have filed a motion for a bill of particulars with the trial court before his arraignment. The appellant failed to do so. It was only when the case was brought to this Court on automatic review that he raised the question of the supposed insufficiency of the criminal complaint, which is now too late by any reckoning.

At all events, accused-appellant participated in the trial and never objected to the presentation of evidence by the prosecution that the rape was committed "on or about the month of August 1996." Appellant likewise never objected to the presentation of evidence by the prosecution to prove that the offenses were committed "on or about sometime (*sic*) 1987, prior and subsequent thereto." He cannot now pretend that he was unable to defend himself in view of the vagueness of the allegation in the information as to when the crimes were committed, as it was shown to the contrary that he participated in the trial and was even able to give an alibi in his defense.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- NELSON ANCHETA PUA and BENLEY ANCHETA PUA, *Appellants.*
G.R. No. 144050, EN BANC, November 11, 2003, *PER CURIAM.*

In People v. Gamer, it held that by entering a plea of not guilty, he submitted himself to the jurisdiction of the trial court, thereby curing any defect in arrest.

In this case, we agree with the appellant's submission that he was arrested without any subsisting and valid warrant of arrest. Although the MTC of Cauayan, Isabela had issued warrants of arrest in Criminal Cases Nos. 98-243 to 98-245, the accused therein was Nelson Laddit Pua and not the appellant Nelson Ancheta Pua. However, he did not question the validity of his arrest before he was arraigned. By entering a plea of not guilty, he submitted himself to the jurisdiction of the trial court, thereby curing any defect in his arrest. Moreover, the appellant participated in the proceedings before the trial court and adduced evidence. The appellant is thus precluded from questioning his arrest and the procedure therefor.

FACTS:

Spouses Caleon were engaged in the business of selling household appliances and hardware. The spouses assigned their daughter Jocelyn to manage the said store. Accused Pua and his cousins met

and decided to kidnap Jocelyn for ransom. Pua rented a car in order to consummate the crime. He also rented the basement of a house. The kidnappers called Jocelyn's father and demanded 5 million pesos. The negotiations had reduced the ransom to 3 million and later on to 1.5 million. Several delays occurred to the giving of ransom money and Jocelyn's release. After the ransom money was delivered, Jocelyn was dropped off at the Congressional Village, Quezon City. Jocelyn then contacted her sister Shiela and told the latter she had already been released. The PAOCTF agents forthwith proceeded to Cauayan, Isabela with their warrant of arrest. Unknown to the agents, the "Nelson Pua" indicated in Criminal Cases Nos. 98-243 to 98-245 as the accused therein, was actually the accused Nelson Laddit Pua, and not the appellant Nelson Ancheta Pua. PAOCTF agents summoned Jocelyn and Simplicio to Camp Crame and Jocelyn identified Benley and Nelson Ancheta Pua, her former classmates or schoolmates, as her kidnappers. In the arraignment, appellant pleaded guilty. The RTC found the accused guilty of kidnapping for ransom.

ISSUE:

Whether appellant had already waived his right to question the validity of the warrant of arrest?

Ruling:

Yes.

We agree with the appellant's submission that he was arrested without any subsisting and valid warrant of arrest. Although the MTC of Cauayan, Isabela had issued warrants of arrest in Criminal Cases Nos. 98-243 to 98-245, the accused therein was Nelson Laddit Pua and not the appellant Nelson Ancheta Pua. However, he did not question the validity of his arrest before he was arraigned. By entering a plea of not guilty, he submitted himself to the jurisdiction of the trial court, thereby curing any defect in his arrest. Moreover, the appellant participated in the proceedings before the trial court and adduced evidence. The appellant is thus precluded from questioning his arrest and the procedure therefor.

However, the waiver by the appellant of his right to question the legality of his arrest does not necessarily carry with it his waiver of the right to question the admissibility of any evidence procured by the PAOCTF agents on the occasion of or incidental to his illegal arrest or thereafter. The plea and actual participation of the appellant in the trial would not cure the illegality of the search and transform the inadmissible evidence into objects of proof. In this case, appellant did not object to the admission of the letter in evidence on the ground that it was secured by the PAOCTF agents incidental to and in the aftermath of his illegal arrest.

The appellant objected to the admission of the letter in evidence solely on the following grounds:
(a) he was coerced into writing the letter;
(b) the contents of the letter were dictated by Major Alexander Rafael; and
(c) he was not assisted by counsel.

The appellant was not under custodial investigation when he wrote the letter. The letter was written of the appellant's own volition, as another attempt to convince the kidnap victim to forgive him and his brother, and for Jocelyn to have mercy on them. Moreover, the counsel of the appellant incisively cross-examined Jocelyn on the letter.

SALVADOR ESTIPONA, JR. Y ASUELA, *Petitioner*, -versus- HON. FRANK E. LOBRIGO, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 3, LEGAZPI CITY, ALBAY, AND PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 226679, EN BANC, August 15, 2017, PERALTA, *J.*

As properly administered in Santobello v. New York, plea bargaining is to be encouraged because the chief virtues of the system – speed, economy, and finality – can benefit the accused, the offended party, the prosecution, and the court.

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.

In this case, the prosecution manifested that it "is open to the Motion of the accused to enter into plea bargaining to give life to the intent of the law as provided in paragraph 3, Section 2 of [R.A. No.] 9165, however, with the express mandate of Section 23 of [R.A. No.] 9165 prohibiting plea bargaining, [it] is left without any choice but to reject the proposal of the accused." Hence, Section 23 of Republic Act No. 9165 is declared unconstitutional for being contrary to the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution.

FACTS:

Petitioner Salvador A. Estipona, Jr. (Estipona) is the accused in Criminal Case No. 13586 for violation of Section 11, Article II of R.A. No. 9165 (Possession of Dangerous Drugs).

On or about the 21st day of March, 2016, in the City of Legazpi, Philippines, the above-named accused, not being lawfully authorized to possess or otherwise use any regulated drug and without the corresponding license or prescription, did then and there, willfully, unlawfully and feloniously have, in his possession and under his control and custody, one (1) piece heat-sealed transparent plastic sachet marked as VOP 03/21/16- l G containing 0.084 [gram] of white crystalline substance, which when examined were found to be positive for Methamphetamine Hydrocloride (Shabu), a dangerous drug.

On June 15, 2016, Estipona filed a *Motion to Allow the Accused to Enter into a Plea Bargaining Agreement*, praying to withdraw his not guilty plea and, instead, to enter a plea of guilty for violation of Section 12, Article II of R.A. No. 9165 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs) with a penalty of rehabilitation in view of his being a first-time offender and the minimal quantity of the dangerous drug seized in his possession.

Petitioner argues that Section 23 of RA 9165 which prohibits plea bargaining in all violations of said law violates:

1. The intent of the law expressed in paragraph 3, Section 2 thereof;

2. The rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution; and
3. The principle of separation of powers among the three equal branches of the government.

In its Comment or Opposition dated June 27, 2016, the prosecution moved for the denial of the motion for being contrary to Section 23 of R.A. No. 9165, which is said to be justified by the Congress' prerogative to choose which offense it would allow plea bargaining.

On July 12, 2016, respondent Judge Frank E. Lobrigo of the Regional Trial Court (RTC), Branch 3, Legazpi City, Albay, issued an Order denying Estipona's motion.

The accused posited in his motion that Sec. 23 of RA No. 9165, which prohibits plea bargaining, encroaches on the exclusive constitutional power of the Supreme Court to promulgate rules of procedure because plea bargaining is a "rule of procedure."

The accused implies that Sec. 23 of Republic Act No. 9165 is unconstitutional because it, in effect, suspends the operation of Rule 118 of the Rules of Court insofar as it allows plea bargaining as part of the mandatory pre-trial conference in criminal cases.

ISSUE:

Whether Estipona is allowed to enter into a plea bargaining agreement to withdraw his not guilty plea and instead enter a plea of guilty?

RULING:

Yes.

Plea bargaining is a rule of procedure

Fabian v. Hon. Desierto laid down the test for determining whether a rule is substantive or procedural in nature.

> It will be noted that no definitive line can be drawn between those rules or statutes which are procedural, hence within the scope of this Court's rule-making power, and those which are substantive. In fact, a particular rule may be procedural in one context and substantive in another. It is admitted that what is procedural and what is substantive is frequently a question of great difficulty. It is not, however, an insurmountable problem if a rational and pragmatic approach is taken within the context of our own procedural and jurisdictional system.
>
> In determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges, or modifies any substantive right, the test is whether the rule really regulates procedure, that is, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but if it operates as a means of implementing an existing right then the rule deals merely with procedure.

In several occasions, the Court dismissed the argument that a procedural rule violates substantive rights. By the same token, it is towards the provision of a simplified and inexpensive procedure for the speedy disposition of cases in all courts that the rules on plea bargaining was introduced. As a way of disposing criminal charges by agreement of the parties, plea bargaining is considered to be an "important," "essential," "highly desirable," and "legitimate" component of the administration of justice.

In this jurisdiction, plea bargaining has been defined as "*a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval*." There is give-and-take negotiation common in plea bargaining. The essence of the agreement is that both the prosecution and the defense make concessions to avoid potential losses.

As properly administered in Santobello v. New York, plea bargaining is to be encouraged because the chief virtues of the system – speed, economy, and finality – can benefit the accused, the offended party, the prosecution, and the court.

Considering the presence of mutuality of advantage, the **rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.**

No constitutional right to plea bargain

Yet a defendant has no constitutional right to plea bargain. No basic rights are infringed by trying him rather than accepting a plea of guilty; the prosecutor need not do so if he prefers to go to trial. Under the present Rules, the acceptance of an offer to plead guilty is not a demandable right but depends on the consent of the offended party and the prosecutor, which is a condition precedent to a valid plea of guilty to a lesser offense that is necessarily included in the offense charged. The reason for this is that the prosecutor has full control of the prosecution of criminal actions; his duty is to always prosecute the proper offense, not any lesser or graver one, based on what the evidence on hand can sustain.

Plea bargaining, when allowed

Plea bargaining is allowed during the arraignment, the pre-trial, or even up to the point when the prosecution already rested its case.

As regards plea bargaining during the pre-trial stage, the trial court's exercise of discretion should not amount to a grave abuse thereof.

If the accused moved to plead guilty to a lesser offense subsequent to a bail hearing or after the prosecution rested its case, the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. The only basis on which the prosecutor and the court could rightfully act in allowing change in the former plea of not guilty could be nothing more and nothing less than the evidence on record. The ruling on the motion must disclose the strength or weakness of the prosecution's evidence. Absent any finding on the weight of the evidence on hand, the judge's acceptance of the defendant's change of plea is improper and irregular.

JOSELITO RANIERO J. DAAN, *Petitioner,* -versus- THE HON. SANDIGANBAYAN (FOURTH DIVISION), *Respondent.*
G.R. Nos. 163972-77, THIRD DIVISION, March 28, 2008, AUSTRIA-MARTINEZ, *J.*

In People of the Philippines v. Villarama, the Court ruled that the acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter that is addressed entirely to the sound discretion of the trial court, viz:

> *x x x In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in People v. Kayanan (L-39355, May 31, 1978, 83 SCRA 437, 450), We held that the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. In his concurring opinion in People v. Parohinog (G.R. No. L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale or the law:*
>
> *x x x* ***(A)fter the prosecution had already rested****, the only basis on which the fiscal and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.*

However, Villarama involved plea bargaining after the prosecution had already rested its case.

As regards plea bargaining during the pre-trial stage, as in the present case, the trial court's exercise of its discretion should neither be arbitrary nor should it amount to a capricious and whimsical exercise of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.

FACTS:

Joselito Raniero J. Daan and Benedicto E. Kuizon falsified the time book and payrolls making it appear that some laborers worked on the construction of the new municipal hall building of Bato, Leyte and collected their respective salaries thereon. They were charged with three counts of malversation of public funds. They were also charged with three counts of falsification of public document by a public officer or employee. In the falsification cases, the accused offered to withdraw their plea of "not guilty" and substitute the same with a plea of "guilty," provided, mitigating circumstances will be appreciated. In the alternative, they are changing the plea to guilty but the crime of falsification by a private individual instead of by a public officer. In the malversation cases, they are changing their plea to guilty to the lesser crime of failure of an accountable officer to render accounts. The Sandiganbayan denied their plea bargaining offer.

ISSUE:

Whether the *Sandiganbayan* gravely abused its discretion in denying the plea bargaining offer?

RULING:

Yes.

Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.

Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, to wit:

> SEC. 2. *Plea of guilty to a lesser offense.* -- At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. Sections 1 and 2, Rule 118 of the Rules of Court, require plea bargaining to be considered by the trial court at the pre-trial conference. But it may also be made during the trial proper and even after the prosecution has finished presenting its evidence and rested its case. Thus, the Court has held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.

In *People of the Philippines v. Villarama*, the Court ruled that the acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right but is a matter that is addressed entirely to the sound discretion of the trial court, *viz*:

> x x x In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in *People v. Kayanan* (L-39355, May 31, 1978, 83 SCRA 437, 450), We held that the *rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged*. In his concurring opinion in *People v. Parohinog* (G.R. No. L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale or the law:
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> x x x **(A)fter the prosecution had already rested**, *the only basis on which the fiscal and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record*. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.

However, *Villarama* involved plea bargaining after the prosecution had already rested its case.

As regards plea bargaining during the pre-trial stage, as in the present case, the trial court's exercise of its discretion should neither be arbitrary nor should it amount to a capricious and whimsical exercise of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent

or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.

In the present case, the *Sandiganbayan* rejected petitioner's plea offer on the ground that petitioner and the prosecution failed to demonstrate that the proposal would redound to the benefit of the public. The *Sandiganbayan* believes that approving the proposal would "only serve to trivialize the seriousness of the charges against them and send the wrong signal to potential grafters in public office that the penalties they are likely to face would be lighter than what their criminal acts would have merited or that the economic benefits they are likely to derive from their criminal activities far outweigh the risks they face in committing them; thus, setting to naught the deterrent value of the laws intended to curb graft and corruption in government."

Apparently, the *Sandiganbayan* has proffered valid reasons in rejecting petitioner's plea offer. However, subsequent events and higher interests of justice and fair play dictate that petitioner's plea offer should be accepted. The present case calls for the judicious exercise of this Court's equity jurisdiction.

Equity seeks to reach complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts and of its power of control and supervision over the proceedings of lower courts, in order to afford equal justice to petitioner.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee* -versus- ANTONIO MAGAT, *Accused-Appellant.*
G.R. No. 130026, EN BANC, May 31, 2000, *PER CURIAM.*

As stated in People vs. De Luna, it is the essence of a plea of guilty that the accused admits absolutely and unconditionally his guilt and responsibility for the offense imputed to him. Hence, an accused may not foist a conditional plea of guilty on the court by admitting his guilt provided that a certain penalty will be meted unto him.

In this case, Accused-appellant's plea of guilty is a conditional plea. The trial court should have vacated such a plea and entered a plea of not guilty for a conditional plea of guilty, or one subject to the proviso that a certain penalty be imposed upon him, is equivalent to a plea of not guilty and would, therefore, require a full-blown trial before judgment may be rendered.

FACTS:

Magat was charged with rape committed on two occasions, after being accused of having carnal knowledge over her daughter. Upon arraignment on January 10, 2007, Antonio pleaded guilty but bargained for a lesser penalty. Complainant's mother and the public prosecutor agreed with the plea bargain. The trial court issued an order finding Antonio guilty of rape and sentencing him to suffer a jail term of 10 years for each case. After three months, the cases were revived on the ground that the penalty imposed was too light. Antonio was re-arraigned on both informations where he entered a plea of not guilty.

Thereafter, trial on the merits ensued with the prosecution presenting Dr. Ida Daniel, medico-legal officer of the National Bureau of Investigation and complainant's mother.

On July 3, 1997 accused-appellant entered anew a plea of guilty. The court read to him the Informations in English and Tagalog and repeatedly asked whether he understood his change of plea and propounded questions as to his understanding of the consequences of his plea.

Convinced of accused-appellant's voluntariness of his plea of guilty, the court required the taking of complainant's testimony. The accused-appellant did not present any evidence.

The trial court rendered judgment finding Antonio guilty of rape and sentencing him to death by lethal injection. Hence, this automatic review.

ISSUE:

Whether the conviction based on the guilty plea (in the January 10, 1997 arraignment) was valid?

RULING:

No.

The January 10, 1997 order of the trial court convicting the accused-appellant on his own plea of guilt is *void ab initio* on the ground that accused-appellant's plea is not the plea bargaining contemplated and allowed by law and the rules of procedure. The only instance where a plea bargaining is allowed under the Rules is when an accused pleads guilty to a lesser offense. Thus, Section 2, Rule 116 of Revised Rules of Court provides:

> "Sec. 2. ***Plea of guilty to a lesser offense.***- The accused, with the consent of the offended party and the fiscal, may be allowed by the trial court to plead guilty to a lesser offense, regardless of whether or not it is necessarily included in the crime charged, or is cognizable by a court of lesser jurisdiction than the trial court. No amendment of the complaint or information is necessary.
>
> "A conviction under this plea shall be equivalent to a conviction of the offense charged for purposes of double jeopardy."

Here, the reduction of the penalty is only a consequence of the plea of guilt to a lesser penalty.

It must be emphasized that accused-appellant did not plead to a lesser offense but pleaded guilty to the rape charges and only bargained for a lesser penalty. In short, as aptly observed by the Solicitor General, he did not plea bargain but made conditions on the penalty to be imposed. This is erroneous because by pleading guilty to the offense charged, accused-appellant should be sentenced to the penalty to which he pleaded.

As stated in People vs. De Luna, it is the essence of a plea of guilty that the accused admits absolutely and unconditionally his guilt and responsibility for the offense imputed to him. Hence, an accused may not foist a conditional plea of guilty on the court by admitting his guilt provided that a certain penalty will be meted unto him.

In this case, Accused-appellant's plea of guilty is a conditional plea. The trial court should have vacated such a plea and entered a plea of not guilty for a conditional plea of guilty, or one subject to

the proviso that a certain penalty be imposed upon him, is equivalent to a plea of not guilty and would, therefore, require a full-blown trial before judgment may be rendered.

In effect, the judgment rendered by the trial court which was based on a void plea bargaining is also *void ab initio* and can not be considered to have attained finality for the simple reason that a *void* judgment has no legality from its inception. Thus, since the judgment of conviction rendered against accused-appellant is *void*, double jeopardy will not lie.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- MARIO ODEN, *Appellant.*
G.R. No. 155511-22, EN BANC, April 14, 2004, VITUG, *J.*

In People v. Molina, the Court held that the process as provided under Section 3, Rule 116, of the 2000 Rules of Criminal Procedure is mandatory and absent any showing that it has been duly observed, a searching inquiry cannot be said to have been aptly undertaken. The trial court must be extra solicitous to see to it that the accused fully understands the meaning and importance of his plea. In capital offenses particularly, life being at stake, one cannot just lean on the presumption that the accused has understood his plea.

While the records of the case are indeed bereft of any indication that the rule has sufficiently been complied with, the evidence for the prosecution outside of the plea of guilt, nevertheless, would adequately establish the guilt of appellant beyond reasonable doubt. The manner by which the plea of guilt is made, whether improvidently or not, loses much of great significance where the conviction can be based on independent evidence proving the commission by the person accused of the offense charged.

FACTS:

Mario Oden was charged with 12 counts of rape. On his arraignment, Mario, assisted by counsel *de oficio,* Atty. Harley Padolina of the Public Attorney's Office (PAO), pleaded "guilty" to the charges.

After the prosecution had rested its case with the testimony of its lone witness (the private complainant), Atty. Harley Padolina (PAO) manifested that the defense would not present any evidence.

On 18 March 2002, the trial court rendered a decision finding appellant guilty beyond reasonable doubt of twelve counts of rape.

In the review of his various cases by this Court, appellant asserts that his plea of guilty has been improvidently made on the mistaken belief that he would be given a lighter penalty with his plea of guilt. On this particular score, the Solicitor General agrees.

ISSUE:

Whether the plea of guilty to the capital offense was improvidently made?

RULING:

Yes.

Section 3, Rule 116, of the 2000 Rules of Criminal Procedure is explicit on the procedure to be taken when an accused pleads guilty to a capital offense, *viz*:

> "**SEC. 3. Plea of guilty to capital offense; reception of evidence.** - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf."

The trial court is mandated (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt, (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and (3) to inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he desires.

The records must show the events that have actually taken place during the inquiry, the words spoken and the warnings given, with special attention to the age of the accused, his educational attainment and socio-economic status, the manner of his arrest and detention, the attendance of counsel in his behalf during the custodial and preliminary investigations, and the opportunity of his defense counsel to confer with him. All these matters should be able to provide trustworthy indices of his competence to give a free and informed plea of guilt. The trial court must describe the essential elements of the crimes the accused is charged with and their respective penalties and civil liabilities. It should also direct a series of questions to the defense counsel to determine whether he has conferred with the accused and has completely explained to him the legal implications of a plea of guilt.

In People v. Molina, the Court held that the process as provided under Section 3, Rule 116, of the 2000 Rules of Criminal Procedure is mandatory and absent any showing that it has been duly observed, a searching inquiry cannot be said to have been aptly undertaken. The trial court must be extra solicitous to see to it that the accused fully understands the meaning and importance of his plea. In capital offenses particularly, life being at stake, one cannot just lean on the presumption that the accused has understood his plea.

While the records of the case are indeed bereft of any indication that the rule has sufficiently been complied with, the evidence for the prosecution outside of the plea of guilt, nevertheless, would adequately establish the guilt of appellant beyond reasonable doubt. The manner by which the plea of guilt is made, whether improvidently or not, loses much of great significance where the conviction can be based on independent evidence proving the commission by the person accused of the offense charged.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee* -versus- HALIL GAMBAO, EDDIE KARIM, EDWIN DUKILMAN, et al., *Accused-Appellants.*
G.R. No. 172707, EN BANC, October 1, 2013, PEREZ, *J.*

In People v. Oden, duties of the trial court when the accused pleads guilty to a capital offense were laid. The trial court is mandated:

a.) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt;

b.) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and
c.) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires

Anent the first requisite, the searching inquiry determines whether the plea of guilt was based on a free and informed judgement. The inquiry must focus on the voluntariness of the plea and the full comprehension of the consequences of the plea.

In this case, the Court finds no cogent reason for deviating from the guidelines provided by jurisprudence. It is evident from the records that the aforesaid rules have not been fully complied with. The questions propounded by the trial court judge failed to ensure that accused fully understood the consequences of their plea. It is apparent from the records that Karim had the mistaken assumption that his plea of guilt would mitigate the imposable penalty. Karim was not warned by the trial court judge that in cases where the penalty is single and indivisible, like death, the penalty is not affected by either aggravating or mitigating circumstances.

FACTS:

Karim, et al. were charged with kidnapping for ransom. During the hearing, after the Prosecution's witnesses testified, Karim manifested his desire to change his earlier plea of not guilty to guilty. The presiding judge explained the consequences of a change of plea by stating that after the withdrawal of the plea of not guilty and after the presentation the evidence, the court will sentence the accused. The other appellants likewise manifested, through their counsel who had earlier conferred with them and explained to each of them the consequences of a change of plea, their desire to change the pleas they entered. The trial court separately asked each of the appellants namely: Gambao, Abao, Udal, Mandao, Dilangalen, Macalinbol, Ronas and Evad if they understood the consequence of changing their pleas. All of them answered in the affirmative. Similarly, Dukilman manifested his desire to change his plea and assured the trial court that he understood the consequences of such change of plea. Thereupon, the trial court ordered their re-arraignment. After they pleaded guilty, the trial court directed the prosecution to present evidence, which it did.

On 16 October 1998, the RTC rendered a decision convicting the accused. Hence, they appealed to the CA. In a Decision dated 28 June 2005, the appellate court affirmed with modifications the decision of the trial court.

As provided for by Art. 267 of the RPC, as amended by RA 7659, the penalty for kidnapping for ransom is death.

ISSUE:

Whether the accused entered an improvident plea due to failure to conduct a searching inquiry?

RULING:

Yes.

A review of the records shows that on 7 October 1998, the accused-appellants withdrew their plea of "not guilty" and were re-arraigned. They subsequently entered pleas of "guilty" to the crime of

kidnapping for ransom, a capital offense. This Court, in *People v. Oden*, laid down the duties of the trial court when the accused pleads guilty to a capital offense. The trial court is mandated:

a.) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt;
b.) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and
c.) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires

The rationale behind the rule is that the courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irreversible. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeiting his life and liberty without having fully understood the meaning, significance and consequence of his plea. Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.

Anent the first requisite, the searching inquiry determines whether the plea of guilt was based on a free and informed judgement. The inquiry must focus on the voluntariness of the plea and the full comprehension of the consequences of the plea. This Court finds no cogent reason for deviating from the guidelines provided by jurisprudence.

It is evident from the records that the aforesaid rules have not been fully complied with. The questions propounded by the trial court judge failed to ensure that accused fully understood the consequences of their plea. It is apparent from the records that Karim had the mistaken assumption that his plea of guilt would mitigate the imposable penalty. Karim was not warned by the trial court judge that in cases where the penalty is single and indivisible, like death, the penalty is not affected by either aggravating or mitigating circumstances.

THE PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- ROGELIO GUMIMBA and RONTE ABABO, *Appellants.*
G.R. No. 174056, EN BANC, February 27, 2007, TINGA, *J.*

As provided in People v. Tonyacao, in a searching inquiry, the court should ascertain from the accused how he was brought into the custody of the law, ask the defense counsel a series of questions as to whether he had completely explained to the accused the meaning and consequences of a plea of guilty, inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence, inform the accused of the crime with which he is charged and the elements of the crime.

In the instant case, when the accused entered a plea of guilty at his re-arraignment, it is evident that the RTC did not strictly observe the requirements under Section 3, Rule 116. A mere warning that the accused faces the supreme penalty of death is insufficient. Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry."

FACTS:

Rogelio Gumimba and Ronte Abapo were charged before the RTC, with the crime of rape with homicide of an eight-year old, thus:

> That on or about April 8, 1997, in Barangay Pantaon, Ozamiz City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with each other, did then and there willfully, unlawfully and feloniously and by means of force, violence and intimidation, to wit: by then and there pinning down one [AAA], a minor, 8 years of age, and succeeded in having carnal knowledge with her and as a result thereof she suffered 6-12 o'clock lacerated wounds of [sic] the vagina as well as fatal stab wounds on the different parts of her body and which were the direct cause of her death thereafter. CONTRARY to Article 335 in relation with Article 249 of the Revised Penal Code.

On 16 May 1997, Appellant and Abapo both entered a plea of not guilty on arraignment. Magallano and Arañas testified that at around 9 o'clock in the evening of 10 April 1997, appellant went to Magallano's home and confessed to him that he alone and by himself raped and killed his (appellant's) niece, AAA, in Purok Pantaon, Ozamiz City. Subsequently, Magallano accompanied appellant to the residence of Arañas where he reiterated his confession. That same night, Magallano, Arañas, appellant and family members of the witnesses proceeded to the home of Barangay Captain Santiago Acapulco, Jr. who conducted an investigation. Appellant repeated his narration and confessed to the barangay captain that he had raped and killed the victim, and that he was alone when he committed the crime. As a result thereof, Acapulco, Jr., in the company of the others, brought appellant to the Ozamiz City Hall and turned him over to the police authorities.

However, Rogelio manifested that he would like to change his earlier plea of not guilty to a plea of guilty.. The RTC ordered his re-arraignment and he entered a plea of guilty. The court conducted an inquiry to ascertain the voluntariness of appellant's plea and his full comprehension of the consequences thereof. Prosecution was likewise charged to establish the guilt and degree of culpability of appellant.

On the basis of Rogelio's plea of guilty, the RTC found him guilty while Ronte was acquitted. Except for the lone testimony of appellant, the RTC held that no other evidence was adduced to prove the participation of Abapo. Moreover, the court a quo found that appellant's testimony implicating Abapo was not worthy of credence coming as it did from a polluted source.

With the death penalty imposed on appellant, the case was elevated to this Court on automatic review. Pursuant to this Court's decision in People v. Mateo, the case was transferred to the Court of Appeals.

On 26 April 2006, the appellate court rendered its Decision affirming the appellant's conviction, but with modification as to damages awarded to the heirs of the victim.

On 3 October 2006, the Court issued an order requiring the parties to simultaneously submit supplemental briefs within thirty (30) days from notice should they so desire. On 21 November and 24 November 2006, appellant and appellee filed similar manifestations that they are adopting the briefs they filed before the Court of Appeals. Thus, appellant filed a petition for review.

ISSUE:

Whether Rogelio entered an improvident plea of guilty due to failure to conduct a searching inquiry?

RULING:

Yes.

The Information, to which appellant pleaded guilty, alleged that homicide was committed by reason or on the occasion of the rape of AAA. This, if proven, would warrant the penalty of death at that time. Accordingly, a plea of guilty to such charges calls into play the provisions of Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, thus –

> Sec. 3. Plea of guilty to capital offense; reception of evidence. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

Based on this rule, when a plea of guilty to a capital offense is entered, there are three (3) conditions that the trial court must observe to obviate an improvident plea of guilty by the accused: (1) it must conduct a searching inquiry into the voluntariness and full comprehension by the accused of the consequences of his plea; (2) it must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) it must ask the accused whether he desires to present evidence on his behalf, and allow him to do so if he so desires.

As provided in People v. Tonyacao, in a searching inquiry, the court should ascertain from the accused how he was brought into the custody of the law, ask the defense counsel a series of questions as to whether he had completely explained to the accused the meaning and consequences of a plea of guilty, inform the accused of the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence, inform the accused of the crime with which he is charged and the elements of the crime.

In the instant case, when the accused entered a plea of guilty at his re-arraignment, it is evident that the RTC did not strictly observe the requirements under Section 3, Rule 116. A mere warning that the accused faces the supreme penalty of death is insufficient. Such procedure falls short of the exacting guidelines in the conduct of a "searching inquiry."

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee,* -versus- PRINCE FRANCISCO, *Accused-Appellant.*
G.R. No. 192818, FIRST DIVISION, November 17, 2010, VELASCO, JR., *J.*

As stated in Suplico v. National Economic and Development Authority, the trial court is entitled to the presumption of regularity of performance of duty under Sec. 2(m), Rule 131 of the Revised Rules of Criminal Procedure, absent any factual or legal basis to disregard this presumption.

In the instant case, the March 4, 2003 Order of the RTC unequivocally demonstrates that the trial court conducted a searching inquiry ascertaining the voluntariness and full comprehension of appellant. The records of the case do not include any transcript of stenographic notes pertaining to the searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilty made by appellant on March 4, 2003 during the pre-trial. The unavailability of the transcript of stenographic notes does not necessarily connote that no searching inquiry was made by the trial court.

FACTS:

Francisco was indicted for murder. During arraignment, he pleaded not guilty. However, during the pre-trial on March 4, 2003, he withdrew his former plea. He was re-arraigned and he pleaded guilty.

Through an Order from the pre-trial proceeding, it was shown that the RTC conducted searching questions to determine that appellant voluntarily entered his guilty plea and that he understood its consequences. The RTC further ordered the setting of the case for the prosecution to adduce evidence proving the guilt of appellant beyond reasonable doubt and to determine the degree of his culpability.

The prosecution rested its case and made its formal offer of exhibits without any objection from the defense.

After admitting the death of Ramil resulting from appellant's assault, the defense, however, did not present any witnesses, but simply argued that the offense of appellant is only homicide and not murder. Contending that no treachery attended the assault, the defense asserted that appellant did not attack Ramil from behind.

The trial court rendered its decision on October 5, 2007, convicting appellant of the crime of Murder. The RTC found the evidence presented by the prosecution sufficient to prove beyond reasonable doubt that appellant committed the crime charged qualified by treachery. But it opined that appellant acted upon an impulse so powerful as naturally to have produced passion or obfuscation, considering an altercation appellant had with Ramil earlier at a billiard hall. Unperturbed, appellant appealed to the CA, raising the lone issue of whether the RTC erred in convicting him of murder.

The CA affirmed the RTC in finding Francisco guilty beyond reasonable doubt for murder. Prince claimed that since there were no transcripts of stenographic notes in the records pertaining to the searching inquiry conducted by the RTC, the searching inquiry was not made by the Court. Thus, we have this appeal

ISSUE:

Whether the absence of stenographic notes connotes failure to conduct a searching inquiry?

RULING:

No.

Section 3, Rule 116 of the Revised Rules of Criminal Procedure pertinently provides:

> Section 3. *Plea of guilty to capital offense; reception of evidence*.--When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

The indispensable requirement of searching inquiry was elucidated in *People v. Mangila*:

> To breathe life into this rule, we made it mandatory for trial courts to do the following:

(1) **conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the accused's plea**;
(2) require the prosecution to prove the guilt of the accused and the precise degree of his culpability; and
(3) inquire whether or not the accused wishes to present evidence on his behalf and allow him to do so if he so desires.

It is also imperative that "a series of questions directed at defense counsel on whether or not counsel has conferred with the accused and has completely explained to him the meaning of a plea of guilt are well-taken steps along those lines."

In *People v. Bello*, the Court explained that: "A `searching inquiry,' under the Rules, means more than informing cursorily the accused that he faces a jail term but so also, the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony."

Lastly, it has been mandated that the accused or his or her counsel be furnished with a copy of the complaint and the list of witnesses against the accused. It has to be made clear that the purpose of the searching inquiry is "not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea."

In the instant case, the records do not include any transcript of stenographic notes pertaining to the searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilty made by appellant on March 4, 2003 during the pre-trial. The March 4, 2003 Order of the RTC unequivocally demonstrates that the trial court conducted a searching inquiry ascertaining the voluntariness and full comprehension of appellant. The unavailability of the transcript of stenographic notes does not necessarily connote that no searching inquiry was made by the trial court. The trial court is entitled to the presumption of regularity of performance of duty under Sec. 2(m), Rule 131 of the Revised Rules of Criminal Procedure, absent any factual or legal basis to disregard this presumption.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- RODOLFO OLING MADRAGA, *Accused-Appellant.*
G.R. No. 129299, EN BANC, November 15, 2000, BUENA, *J.*

The duty of the trial court to conduct a searching inquiry into the voluntariness and full comprehension of the accused's plea only arises in a plea of guilty to a capital offense.

FACTS:

Rodolfo Madraga was charged with two counts of rape allegedly committed against his own 16-year old daughter. At the arraignment, accused-appellant entered separate pleas of not guilty for each case. On December 2, 1996, counsel for the accused manifested that the accused was willing to enter a plea of guilty to the crime of rape on the first rape case. The Court then found Rodolfo guilty of the crime of rape.

ISSUE:

Whether the plea of guilty is null and void failure to conduct a searching inquiry. (No)

RULING:

The contention would have been correct were it not for the circumstance that accused-appellant did not, in fact, plead guilty to a capital offense in the first place. However, on the case at hand, only the first paragraph of the complaint mentions the age of the private complainant and the relationship of the accused to the private complainant. Failure to allege the fact of filiation and minority in the information for rape is fatal and consequently bars conviction of its qualified form. Hence, the complaint charges only simple rape under Art. 335, for which the penalty is only *reclusion perpetua*, and not for rape under R.A. 7659, qualified by the circumstance that the offender is the father of the victim who is a minor, for which the penalty is death. Since the appellant did not plead guilty to a capital offense, he cannot properly invoke Sec. 3, Rule 116.

JUAN PONCE ENRILE, *Petitioner,* -versus- PEOPLE OF THE PHILIPPINES, HON. AMPARO M. CABOTAJE-TANG, HON. SAMUEL R. MARTIRES, AND HON. ALEX L. QUIROZ OF THE THIRD DIVISION OF THE SANDIGANBAYAN, *Respondents.*
G.R. No. 213455, EN BANC, August 11, 2015, Brion, *J.*

In criminal cases, a bill of particulars details items or specific conduct not recited in the Information but nonetheless pertain to or are included in the crime charged. Its purpose is to enable an accused: to know the theory of the government's case; to prepare his defense and to avoid surprise at the trial; to plead his acquittal or conviction in bar of another prosecution for the same offense; and to compel the prosecution to observe certain limitations in offering evidence.

In this case, the Court held that Enrile is entitled to bill of particulars regarding the particular over acts which constituted the "combination" and " series; and, who committed such acts. In the crime of plunder, the manner of amassing the ill-gotten wealth — whether through a combination or series of overt acts under Section 1(d) of Republic Act (RA) No. 7080 — is an important element that must be alleged.

FACTS:

On June 5, 2014, the Office of the Ombudsman filed an Information[3] for plunder against Enrile, Jessica Lucila Reyes, Janet Lim Napoles, Ronald John Lim, and John Raymund de Asis before the Sandiganbayan.

On July 8, 2014, Enrile received a *notice of hearing* informing him that his arraignment would be held before the Sandiganbayan's Third Division on July 11, 2014. On July 10, 2014, **Enrile filed a *motion for bill of particulars***[8]before the Sandiganbayan.

The Court denied Enrile's motion for bill of particulars on the following grounds:

(1) ***the details that Enrile desires are "substantial reiterations" of the arguments he raised in his supplemental opposition to the issuance of warrant of arrest and for dismissal of information;*** and
(2) ***the details sought are evidentiary in nature and are best ventilated during trial.***

In Enrile's petition for certiorari, he claims that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied his *motion for bill of particulars* despite the ambiguity and insufficiency of the Information filed against him. Enrile maintains that the denial was a serious violation of his constitutional right to be informed of the nature and cause of the accusation against him.

Enrile further alleges that he was left to speculate on what his specific participation in the crime of plunder had been. He posits that the Information should have stated the details of the particular acts that allegedly constituted the imputed series or combination of overt acts that led to the charge of plunder.

ISSUE:

Whether the motion for bill of particulars should be granted. (Yes)

RULING:

In general, a bill of particulars is the further specification of the charges or claims in an action, which an accused may avail of by motion before arraignment, to enable him to properly plead and prepare for trial. Its purpose is to enable an accused: to know the theory of the government's case; to prepare his defense and to avoid surprise at the trial; to plead his acquittal or conviction in bar of another prosecution for the same offense; and to compel the prosecution to observe certain limitations in offering evidence.

If the Information is lacking, a court should take a liberal attitude towards its granting and order the government to file a bill of particulars elaborating on the charges. Doubts should be resolved in favor of granting the bill to give full meaning to the accused's Constitutionally guaranteed rights. Notably, the government cannot put the accused in the position of disclosing certain overt acts through the Information and withholding others subsequently discovered, all of which it intends to prove at the trial. This is the type of surprise a bill of particulars is designed to avoid. The accused is entitled to the observance of all the rules designated to bring about a fair verdict. This becomes more relevant in the present case where the crime charged carries with it the severe penalty of capital punishment and entails the commission of several predicate criminal acts involving a great number of transactions spread over a considerable period of time.

The grant or denial of a motion for bill of particulars is discretionary on the court where the Information is filed. As usual in matters of discretion, the ruling of the trial court will not be reversed unless grave abuse of discretion or a manifestly erroneous order amounting to grave abuse of discretion is shown.

With regard to the questions "what are the particular overt acts which constitute the "combination" and "series?" and "who committed those acts?", the Court held that Enrile is entitled to a bill of particulars. A reading of the Information filed against Enrile in the present case shows that ***the prosecution made little or no effort to particularize the transactions that would constitute the required series or combination of overt acts***. Without any specification of the basic transactions where kickbacks or commissions amounting to at least P172,834,500.00 had been allegedly received, Enrile's preparation for trial is obviously hampered.

It is not sufficient to simply allege that the amount of ill-gotten wealth amassed amounted to at least P50 million; the manner of amassing the ill-gotten wealth — whether through a combination or series of overt acts under Section 1(d) of Republic Act (RA) No. 7080 — is an important element that must be alleged.

Based on the foregoing, Enrile is entitled to bill of particulars regarding the particular over acts which constituted the "combination" and " series; and, who committed such acts.

SPOUSES ALEXANDER TRINIDAD and CECILIA TRINIDAD, *Petitioners,* -versus- VICTOR ANG, *Respondent*.
G.R. No. 192898, THIRD DIVISION, January 31, 2011, Brion, *J.*

Section 11, Rule 116 of the Rules of Court limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office.

FACTS:

The Office of the City Prosecutor, Masbate City, issued a Resolution recommending the filing of an information for Violation of *Batas Pambansa Bilang* 22 against the Trinidads. The Trinidads filed with the Department of Justice (*DOJ*) a petition for review challenging this Resolution. Meanwhile, the Office of the City Prosecutor filed before the *MTCC* an Information for Violation of *Batas Pambansa Bilang* 22 against the Trinidads. The latter filed a *Manifestation and Motion to Defer Arraignment and Proceedings and Hold in Abeyance the Issuance of Warrants of Arrest* praying, among others, for the deferment of their arraignment in view of the pendency of their petition for review before the DOJ. It was granted, but upon reconsideration, it ordered and set the arraignment on September 10, 2009.

The Trinidads filed a petition for *certiorari* before the Regional Trial Court (RTC) but was denied contending that the MTCC judge did not err in setting the arraignment of the Trinidads after the lapse of one (1) year and ten (10) months from the filing of the petition for review with the DOJ.
After the amendment of the Rules on December 1, 2000, the Supreme Court applied the 60-day limit on suspension of arraignment in case of a pendency of a petition for review with the DOJ.

ISSUE:

Whether or not the MTCC correctly proceeded with arraignment pending the appeal with the DOJ. (Yes)

RULING:

While the pendency of a petition for review is a ground for suspension of the arraignment, the Section 11, Rule 116 of the Rules of Court limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment.

In the present case, the Trinidads filed their petition for review with the DOJ on October 10, 2007. When the RTC set the arraignment of the petitioners on August 10, 2009, 1 year and 10 months had already lapsed. This period was way beyond the 60-day limit provided for by the Rules.

PEOPLE OF THE PHILIPPINES, *Petitioner,* -versus- EDGARDO V. ODTUHAN, *Respondent.*
G.R. No. 191566, THIRD DIVISION, July 17, 2013, Peralta, *J.*

When a party files a motion to quash information for bigamy based on the trial court's declaration that his marriage is null and void ab initio, the same cannot be granted. A motion to quash information is the mode by which an accused assails the validity of a criminal complaint or information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the information." It is a hypothetical admission of the facts alleged in the information. The fundamental test in determining the sufficiency of the material averments in an Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law.

FACTS:

On July 2, 1980, respondent married Jasmin Modina (Modina). On October 28, 1993, respondent married Eleanor A. Alagon (Alagon). Sometime in August 1994, he filed a petition for annulment of his marriage with Modina. On February 23, 1999, the RTC of Pasig City granted respondent's petition and declared his marriage with Modina void ab initio for lack of a valid marriage license.

On November 10, 2003, Alagon died. In the meantime, in June 2003, private complainant Evelyn Abesamis Alagon learned of respondent's previous marriage with Modina. She thus filed a Complaint-Affidavit charging respondent with Bigamy.

On April 15, 2005, respondent was indicted in Information for Bigamy. Respondent filed an Omnibus Motion praying that he be allowed to present evidence to support his motion; that his motion to quash be granted; and that the case be dismissed. Respondent moved for the quashal of the

information on two grounds, to wit: (1) that the facts do not charge the offense of bigamy; and (2) that the criminal action or liability has been extinguished.

On September 4, 2008, the RTC issued an Order denying respondent's Omnibus Motion. The RTC held that the facts alleged in the information constitute the crime of bigamy. Respondent's motion for reconsideration was likewise denied. Aggrieved, respondent instituted a special civil action on certiorari under Rule 65 of the Rules of Court before the CA, which the appellate court granted. The CA concluded that the RTC gravely abused its discretion in denying respondent's motion to quash the information, considering that the facts alleged in the information do not charge an offense. Hence, this petition.

ISSUE:

Whether the CA committed reversible error when it granted respondent's petition for certiorari, considering that the subsequent court judgment declaring respondent's first marriage void ab initio did not extinguish respondent's criminal liability which already attached prior to said judgment. (Yes)

RULING:

The petition is granted.

As defined in Antone, "a motion to quash information is the mode by which an accused assails the validity of a criminal complaint or information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the information." It is a hypothetical admission of the facts alleged in the information. The fundamental test in determining the sufficiency of the material averments in an Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law.

Evidence aliunde or matters extrinsic of the information are not to be considered. To be sure, a motion to quash should be based on a defect in the information which is evident on its fact. Thus, if the defect can be cured by amendment or if it is based on the ground that the facts charged do not constitute an offense, the prosecution is given by the court the opportunity to correct the defect by amendment. If the motion to quash is sustained, the court may order that another complaint or information be filed except when the information is quashed on the ground of extinction of criminal liability or double jeopardy.

Respondent's motion to quash was founded on the trial court's declaration that his marriage with Modina is null and void ab initio. He claims that with such declaration, one of the elements of the crime is wanting. The Family Code has settled once and for all that a declaration of the absolute nullity of a marriage is now explicitly required either as a cause of action or a ground for defense. It has been held in a number of cases that a judicial declaration of nullity is required before a valid subsequent marriage can be contracted; or else, what transpires is a bigamous marriage, reprehensible and

immoral. The issue on the declaration of nullity of the marriage between petitioner and respondent only after the latter contracted the subsequent marriage is, therefore, immaterial.

FELICISIMO F. LAZARTE, JR., *Petitioner,* -versus- SANDIGANBAYAN (First Division) and PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 180122, EN BANC, March 13, 2009, Tinga, *J.*

The fundamental test in reflecting on the viability of a motion to quash, on the ground that the facts charged do not constitute an offense, is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in law.

FACTS:

The National Housing Authority awarded the original contract for the infrastructure works on the Pahanocoy Sites and Services Project to A.C. Cruz Construction. However, for failure to comply with the work construction, the NHA Board of Directors approved the mutual termination of the A.C. Cruz Construction contract and awarded the remaining work to another corporation. After its special audit investigation, the COA uncovered some anomalies, among which, are ghost activities, specifically the excavation of unsuitable materials and road filling works and substandard workmanship. Felicisimo Lazarte as manager of the Regional Projects Department and Chairman of the Inventory and Acceptance Committee, and other NHA officials were charged with violation of RA 3019 or the Anti-Graft and Corrupt Practices Act. Felicisimo filed a motion to quash the information raising the grounds that the facts charged in the information do not constitute an offense the prosecution failed to determine the individual participation of all the accused.

ISSUE:

Whether the information may be quashed. (No)

RULING:

A complaint or information is sufficient if it states the name of the accused, the designation of the offense by the statute, the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed. The information alleges the essential elements of violation of R.A. No. 3019. On the contention that the information did not detail the individual participation of the accused in the allegation of conspiracy, when conspiracy is not charged as a crime in itself but only as the mode of committing the crime, there is no need to recite its particularities because conspiracy is not the gravamen of the offense charged.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- DEMETRIO SALAZAR, *Accused-Appellant.*
G.R. No. 181900, FIRST DIVISION, October 20, 2010, VELASCO, JR., *J.*

The execution of an affidavit of desistance is not a ground for a motion to quash.

FACTS:

Two informations were filed before the RTC charging Salazar with two counts of statutory rape. It was alleged that he, on two separate occasions, had raped a 12-year-old girl, AAA. However, on February 22, 2000, AAA purportedly executed an affidavit of desistance wherein she stated that she was not raped by accused-appellant and that she no longer intends to pursue the cases filed against accused-appellant.

ISSUE:

Whether the affidavit of desistance is a ground for a motion to quash. (No)

RULING:

A recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.

PEOPLE OF THE PHILIPPINES, *Petitioner,* -versus- SANDIGANBAYAN and MANUEL S. ALBA, *Respondents.*
G.R. No. 144159, SECOND DIVISION, September 29, 2004, CALLEJO, SR., *J.*

The absence of probable cause for the issuance of a warrant of arrest is not a ground for the quashal of the information but is a ground for the dismissal of the case. Dismissal does not decide the case on the merits or that the defendant is not guilty.

FACTS:

An information was filed with the Sandiganbayan charging Alba and Cruz with violation of Section 3(e) of RA 3019 based on the complaint-affidavit stating that while in the performance of his official function and acting with evident bad faith and manifest partiality, Alba issued a memorandum recalling the order of demolition issued by the Acting Building Official knowing that he has no authority to do so, thus, giving unwarranted preference to Cruz in the discharge of his official functions.

Alba filed with the Sandiganbayan a motion to quash the information on the grounds that the finding of the probable cause by the Ombudsman was not supported by any evidence and the information filed was not sufficient to indict him of the offense charged. The Sandiganbayan granted the motion

to quash the information and acquitted Alba and Cruz of the offense charged stating that there was no probable cause to charge Alba and Cruz of the crime.

ISSUE:

Whether the Sandiganbayan gravely abused its discretion when it granted the motion to quash. (Yes)

RULING:

The SPO filed a Manifestation and Motion with the Sandiganbayan stating that the Ombudsman had affirmed his finding of a probable cause against Alba and prayed for the arraignment of the accused. Alba was accordingly arraigned and pleaded not guilty. He even posted a bail bond for his provisional liberty, which was duly approved by the Sandiganbayan. The court had already acquired jurisdiction over the person of Alba without the need for the issuance of a warrant of arrest for his apprehension and incarceration. The Sandiganbayan should have set the pre-trial of the case instead of quashing the information and even acquitting the respondent. The arraignment of the respondent and his posting a bail bond for his provisional liberty proscribed the Sandiganbayan from dismissing the case for lack of probable cause.

To quash means to annul, vacate or overthrow. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc. By quashing the information on the premise of lack of probable cause instead of merely dismissing the case, the Sandiganbayan acted in violation of case law and, thus, acted with grave abuse of its discretion amounting to excess or lack of jurisdiction.

And yet, the Sandiganbayan acquitted the Alba. The dismissal of a case is different from the acquittal of the accused therein. Except in a dismissal of the case based on a demurrer to evidence filed by the accused, or for violation of the right of the accused to a speedy trial, the dismissal of a criminal case will not result in the acquittal of the said accused. The respondent cannot even invoke double jeopardy. A void judgment has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. It cannot impair or create rights; nor can any right be based on it.

HILARIO P. SORIANO and ROSALINDA ILAGAN, *Petitioners,* -versus- PEOPLE OF THE PHILIPPINES, BANGKO SENTRAL NG PILIPINAS (BSP), and PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC), *Respondents.*
G.R. No. 159517-18, THIRD DIVISION, June 30, 2009, NACHURA, *J.*

A special civil action for certiorari is not the proper remedy to assail the denial of a motion to quash an information. The proper procedure in such a case is for the accused to enter a plea, go to trial without prejudice on his part to present the special defenses he had invoked in his motion to quash and if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law.

FACTS:

Soriano and Ilagan were President and General Manager, respectively, of the Rural Bank of San Miguel (Bulacan), Inc. (RBSM). During their incumbency, they indirectly obtained loans from RBSM by falsifying the loan applications and other bank records and made it appear that Malang and Mañaol obtained loans when in fact they did not.

Soriano was charged under two separate informations with the RTC for violation of Section 83 of the General Banking Act or the Violation of the DOSRI Rules. Soriano and Ilagan were also indicted for estafa through falsification of commercial document for obtaining said loan.

Soriano and Ilagan moved to quash the informations filed against them on grounds that: (i) more than one offense is charged; and (ii) the facts charged do not constitute an offense. The RTC denied their motion to quash. The CA affirmed the decision of the RTC.

ISSUE:

Whether the CA and the RTC erred in denying the motion to quash. (No)

Ruling:
Duplicity of offenses in a single information is a ground to quash the information under Section 3(e), Rule 117 of the 1985 Rules of Criminal Procedure. This is to avoid confusing the accused in preparing his defense. There is duplicity of charges when a single complaint or information charges more than one offense. In this case, however, Soriano was faced not with one information charging more than one offense, but with more than one information, each charging a different offense - violation of DOSRI rules in one, and estafa thru falsification of commercial documents in the others. Ilagan, on the other hand, was charged with estafa thru falsification of commercial documents in separate informations. Soriano and Ilagan erroneously invoke duplicity of charges as a ground to quash the informations.

Soriano also contends that he should be charged with one offense only, because all the charges filed against him proceed from and are based on a single act of obtaining fictitious loans. Soriano argues that he cannot be charged with estafa thru falsification of commercial document, considering that he is already being prosecuted for obtaining a DOSRI loan. The contention has no merit. A single act or incident might offend two or more entirely distinct provisions of law, thus justifying the filing of several charges against the accused.

There are differences between the two offenses. A DOSRI violation consists in the failure to observe and comply with procedural, reportorial or ceiling requirements prescribed by law in the grant of a loan to a director, officer, stockholder and other related interests in the bank, i.e. lack of written approval of the majority of the directors of the bank and failure to enter such approval into corporate records and to transmit a copy thereof to the BSP supervising department. The elements of abuse of confidence, deceit, fraud or false pretenses, and damage, which are essential to the prosecution for estafa, are not elements of a DOSRI violation. The filing of several charges against Soriano was therefore proper.

Petitioners question the sufficiency of the allegations in the informations, contending that the same do not constitute an offense. The fundamental test in considering a motion to quash anchored on Section 3 (a), Rule 117 of the1985 Rules on Criminal Procedure, is the sufficiency of the averments in the information; that is, whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense charged as defined by law. The trial court may not consider a situation contrary to that set forth in the criminal complaint or information. Facts that constitute the defense of the petitioners against the charge under the information must be proved by them during trial. Such facts or circumstances do not constitute proper grounds for a motion to quash the information on the ground that the material averments do not constitute the offense.

The informations contain material allegations charging Soriano with violation of DOSRI rules and estafa thru falsification of commercial documents. There is no justification for the quashal of the information filed against petitioners. The RTC committed no grave abuse of discretion in denying the motions.

HERMILO RODIS, SR., *petitioner,* -versus- THE SANDIGANBAYAN, SECOND DIVISION, and PEOPLE OF THE PHILIPPINES, *respondents.*
G.R. Nos. 71404-09, EN BANC, October 26, 1988, FERNAN, *C. J.*

The absence of preliminary investigations does not affect the court's jurisdiction over the case nor does it impair the validity of the information or otherwise render it defective. But if there were no preliminary investigations and the defendants, before entering their plea, invite the attention of the court as to their absence, the court, instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted.

FACTS:

Rodis, former President of Philfinance, together with some other persons, was charged before the Sandiganbayan in separate informations with five counts of violation of Section 3(b) of RA 3019. Rodis filed a motion to quash said informations on the ground of lack of preliminary investigation. The prosecution opposed the motion arguing that lack of preliminary investigation is not among the grounds efor a motion to quash enumerated under Sec. 3, Rule 117 of the 1985 Rules on Criminal Procedure.

The Sandiganbayan issued a resolution denying Rodis' motion to quash stating that if the accused was not afforded due preliminary investigation, the proper remedy for him is to file a Petition for Reinvestigation with the Office of the Tanodbayan.

ISSUE:

Whether the lack of preliminary investigation is a valid ground to quash the informations. (No)

RULING:

A preliminary investigation was conducted by the Tanodbayan prior to the filing of the informations. Rodis, however, was not able to participate therein as the subpoena addressed to him at Philfinance

his last known address, was returned unserved, Rodis having already severed his employment with said company at the time of service.

The purposes of a preliminary investigation are to secure the innocent against hasty, malicious and oppressive prosecution, and to protect the accused from an open and public accusation of crime, from the trouble, expense and anxiety of' a public trial, and also to protect the state from useless and expensive trials.

Although the Sandiganbayan was correct in ruling that the absence of a preliminary investigation is not a ground for quashing an information, it should have held the proceedings in the criminal cases in abeyance pending resolution by the Tanodbayan of petitioner's petition for reinvestigation, as alternatively prayed for in his motion to quash.

During the pendency of the case, Rodis manifested to the Court that in a Joint Order dated September 26, 1985, Tanodbayan Special Prosecutors had recommended that the separate petitions for reinvestigation filed by Rodis and his co-accused be given due course by the Tanodbayan and that said special prosecutors be given authority to conduct such reinvestigation. Although it appears that these recommendations were approved by the Tanodbayan, no further report on this matter has reached the Court. As the Court cannot assume that the reinvestigation was indeed conducted as would render the instant petition moot and academic, and considering the importance of the issue involved, the Court deemed it proper to decide the petition on the merits. The Sandiganbayan is ordered to hold in abeyance the proceedings therein with respect to Rodis, subject to the outcome of the reinvestigation of the Tanodbayan of the aforesaid cases.

CLARITA DEPAKAKIBO GARCIA, *Petitioner,* -versus- SANDIGANBAYAN and REPUBLIC OF THE PHILIPPINES, *Respondents.*
G.R. No. 170122, THIRD DIVISION, October 12, 2009, VELASCO, JR., J.

Double jeopardy refers to jeopardy of punishment for the same offense and presupposes two separate criminal prosecutions.

FACTS:

A petition for the forfeiture of properties pursuant to RA No. 1379 was filed with the Sandiganbayan by the Office of the Ombudsman (OMB) to recover unlawfully acquired funds and properties by Maj. Gen. Carlos F. Garcia, petitioner Clarita Garcia, and their three children. The OMB also charged the Garcias and three others with violation of RA 7080 with the Sandiganbayan. The plunder charge, as the parties' pleadings seem to indicate, covered substantially the same properties identified in both forfeiture cases.

The Garcias filed a motion to dismiss on the ground of the Sandiganbayan's lack of jurisdiction over separate civil actions for forfeiture and that the consolidation is imperative in order to avoid possible double jeopardy entanglements. The Sandiganbayan denied the motion to quash filed by the Garcias.

ISSUE:

Whether there is double jeopardy. (No)

RULING:

A forfeiture case under RA 1379 arises out of a cause of action separate and different from a plunder case, thus negating the notion that the crime of plunder charged in Crim. Case No. 28107 absorbs the forfeiture cases. In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Sec. 4 of RA 7080, for purposes of establishing the crime of plunder, it is "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy [to amass, accumulate or acquire ill-gotten wealth]." On the other hand, all that the court needs to determine, by preponderance of evidence, under RA 1379 is the disproportion of respondent's properties to his legitimate income, it being unnecessary to prove how he acquired said properties. The forfeitable nature of the properties under the provisions of RA 1379 does not proceed from a determination of a specific overt act committed by the respondent public officer leading to the acquisition of the illegal wealth.

Petitioner's thesis on possible double jeopardy entanglements should a judgment of conviction ensue in Criminal Case 28107 collapses entirely. Proceedings under RA 1379 are civil in nature. As a necessary corollary, one who is sued under RA 1379 may be proceeded against for a criminal offense. The filing of a case under that law is not barred by the conviction or acquittal of the defendant in Crim. Case 28107 for plunder.

Petitioners argue that the division where the plunder case is pending may issue a decision that would be in conflict with the decision by this division on the forfeiture case. They refer to a situation where this Court's Second Division may exonerate the respondents in the plunder case while the Fourth Division grants the petition for forfeiture for the same properties in favor of the state or vice versa. However, the variance in the decisions of both divisions does not give rise to a conflict. Forfeiture in the plunder case requires the attendance of facts and circumstances separate and distinct from that in the forfeiture case. Between the two cases, there is no causal connection in the facts sought to be established and the issues sought to be addressed. The decision of this Court in one does not have a bearing on the other.

There is also no conflict even if the decisions in both cases result in an order for the forfeiture of the subject properties. The forfeiture following a conviction in the plunder case will apply only to those ill-gotten wealth not recovered by the forfeiture case and vice versa. This is on the assumption that the information on plunder and the petition for forfeiture cover the same set of properties.

PHILIPPINE NATIONAL BANK *v.* LILIAN S. SORIANO
G.R. No. 164051, October 3, 2012, PEREZ, *J.*

Section 7, Rule 117 of the Rules of Court provides for the requisites for double jeopardy to set in: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.

FACTS:

Lisam Enterprises, Inc. (LISAM), which maintains current account with PNB, availed of a credit facility through a Floor Stock Line (FSL) in the amount of P30 Million. LISAM executed 52 Trust Receipts (TRs), through Soriano, the authorized signatory in all of LISAM's transactions with PNB.

PNB's authorized personnel conducted an actual physical inventory and found that only four units covered by the TRs remained unsold. LISAM should have remitted to PNB the proceeds of P29,487,844.55. Despite several formal demands, Soriano failed to turn over the amount to the PNB. PNB filed a complaint-affidavit charging Soriano with 52 counts of violation of the Trust Receipts Law, in relation to Article 315, paragraph 1(b) of the RPC.

The City Prosecutors of Naga City found probable cause. The DOJ set aside the resolution of the Naga City Prosecutor. PNB questioned the resolution issued by the DOJ with the CA but the CA dismissed PNB's petition for *certiorari*.

ISSUE:

Whether the reinstatement of criminal cases would result to double jeopardy

RULING:

No. The withdrawal of the criminal cases did not include a categorical dismissal thereof by the RTC. Double jeopardy had not set in because Soriano was not acquitted nor was there a valid and legal dismissal or termination of the 51 cases against her. The requirement of conviction or acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met.

In *Cerezo v. People, (G.R. No. 185230, June 1, 2011),* the trial court simply followed the prosecution's lead on how to proceed with the libel case against the three accused. The prosecution twice changed their mind on whether there was probable cause to indict the accused for libel. On both occasions, the trial court granted the prosecutor's motions. The DOJ Secretary directed the prosecutor to re-file the information against the accused which the trial court forthwith reinstated. Ruling on the same issues raised by PNB in this case, the Court emphasized that in thus resolving a motion to dismiss a case or to withdraw an information, the trial court should not rely solely on the findings of the public prosecutor or the Secretary of Justice. It is the court's bounden duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the motion.

From the March 17, 2004 Order of the RTC, dismissing the criminal case, that the RTC judge failed to make his own determination of whether there was a *prima facie* case to hold respondents for trial. He failed to make an independent assessment of the merits of the case. The RTC judge blindly relied on the recommendation of the prosecutor when he should have been more judicious in resolving the Motion to Dismiss and Withdraw the information.

PEOPLE OF THE PHILIPPINES *v.* HON. SANDIGANBAYAN (FIFTH DIVISION), ABELARDO P. PANLAQUI, RENATO B. VELASCO, ANGELITO PELAYO and WILFREDO CUNANAN
G.R. No. 173396, September 22, 2010, PERALTA, *J.*

After trial on the merits, an acquittal is immediately final and cannot be appealed on the ground of double jeopardy. The only exception where double jeopardy cannot be invoked is where there is a finding of mistrial resulting in a denial of due process.

FACTS:

Private respondents were charged for violation of sec. 3(e) of RA 3019 with the Sandiganbayan for granting unwarranted benefits to J.S. Lim Construction by entering into a Contract of Lease of Equipment with J.S. Lim Construction without being authorized by the Sangguniang Bayan for the deepening and dredging of the Palto and Pakulayo Rivers in Sasmuan, Pampanga and caused it to appear that work on the said project had been 100% completed per the approved Program of Work and Specifications notwithstanding the fact that no work had actually been done.

Private respondents were duly arraigned and pleaded not guilty to the charge against them. After due trial, the Sandiganbayan acquitted the private respondents for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt. The People, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), then filed the present petition for *certiorari*.

ISSUE:

Whether the petition for *certiorari* was proper in questioning the acquittal

RULING:

No. The Court expounded in *First Corporation v. Former Sixth Division of the Court of Appeals (G.R. No. 171989, July 4, 2007)* that a review of facts and evidence is not the province of the extraordinary remedy of certiorari, which is extra *ordinem* - beyond the ambit of appeal. In certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence.

Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by certiorari. An error of judgment is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court a quo.

The aim of the present petition is to overturn the Sandiganbayan's conclusion that "there is no doubt that dredging work was performed along the Palto and Pakulayo Rivers" and the "project was actually undertaken and accomplished by the said contractor hence the payment made to the latter was justified." From such finding, the trial court held that the prosecution failed to prove the presence of all the elements of the offense charged, resulting in the acquittal of private respondents. Petitioner points out that the lower court erred in arriving at such conclusion, since prosecution evidence shows that as of September 2, 1991 to October 2, 1991, when the dredging works were supposedly conducted, there was as yet no approved plans and specifications as required by PD No. 1594 before bidding for construction contracts can proceed.

This is an issue involving an alleged error of judgment, not an error of jurisdiction. Petitioner has not convincingly shown that the prosecution has indeed been deprived of due process of law. There is no showing that the trial court hampered the prosecution's presentation of evidence in any way. On the contrary, the prosecution was given ample opportunity to present its ten witnesses and all necessary documentary evidence. The case was only submitted for decision after the parties had duly rested their case.

There being no mistrial in this case, the acquittal of private respondents can no longer be reviewed by the Court as this would constitute a violation of the constitutional right against double jeopardy. Since the alleged error is only one of judgment, petitioner is not entitled to the extraordinary *writ of certiorari*

PEOPLE OF THE PHILIPPINES, *Petitioner*, vs. DIR. GEN. CESAR P. NAZARENO, DIR. EVERLINO NARTATEZ, DIR. NICASIO MA. S. CUSTODIO, and THE SANDIGANBAYAN (FIFTH DIVISION), *Respondents*.
G.R. No. 168982 EN BANC August 5, 2009, BRION, *J.:*

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." Applying all these principles, the present Rule 45 petition must necessarily fail. Even under our most liberal reading, we cannot treat the petition as a Rule 65 petition, as it raises no jurisdictional error that can invalidate a verdict of acquittal.

FACTS:

Three (3) separate but related contracts – between the Philippine National Police (*PNP*) and Beltra Industries, for the purchase and delivery of Caliber .45 Thompson Brand pistols – spawned the filing of the criminal charge against the respondents. The first of the contracts, covered by Purchase Order (*PO*) No. 081190-654 dated November 8, 1990, was for the purchase and delivery of 2,822 units at ₱18,550.30 each, for the total amount of ₱52,348,946.60. The second was covered by PO No. 0-240-492-185 dated April 24, 1992 for the purchase of 1,617 units for ₱29,995,835.10. The third was under PO No. 0-050-582-153 dated May 5, 1992, for the purchase of 1,242 units at a total price of ₱23,039,472.60. The purchase orders were signed by then Director General Nazareno and then Director Nartatez, while the corresponding checks were signed by then Director Custodio.

Allegations of irregularity or overpricing surrounded the procurement, leading then President Fidel V. Ramos to order the creation of a tri-agency investigating committee composed of lawyers from the PNP's Inspector General's Office, the National Police Commission, and the Office of the President. This committee found no overpricing; neither did it find collusion among the officers of the PNP participating in the transactions.
The Commission on Audit, for its part, created a special audit team to look into the same allegations of overpricing. After due proceedings and based on the report of the special audit team, the Office of the Special Prosecutor filed an information against the respondents with the Sandiganbayan. The respondents pleaded not guilty to the charge.

At the trial, the People presented the members of the special audit team to testify on the overpricing that the team found. Among others, a member of the special audit team testified that there was a big difference between the AFP price and the PNP's; as shown by documents obtained from the Philippine Navy, the AFP purchased the pistols at a unit cost of ₱10,578.25. The People then presented the documents related to the various contracts and the documents the members of the audit team mentioned in their testimonies.
The Sandiganbayan agreed with the respondents' submissions and acquitted the respondents after trial. The Sandiganbayan further observed that the audit team followed a flawed procedure in reaching its overpricing conclusion. The audit team merely relied on the AFP Supply Issuance and did not conduct any actual canvass of the gun prices. Thus, to the Sandiganbayan, the comparison made between the PNP price and the AFP quoted cost was substantially deficient under the prevailing rules that indispensably required an actual canvass done on different and identified suppliers to show exactly the variances in the prices of similar articles to firm up, for evidentiary purposes and to a reliable degree of certainty, a finding of overpricing. Despite its clearly negative conclusion on the overpricing charge, the Sandiganbayan still proceeded to discuss and reject the allegation of conspiracy between and among the respondents. The People filed the present petition under Rule 45 of the Rules of Court

ISSUE:

Whether or not the review sought violates their constitutional right against double jeopardy.

RULING:

Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[10]

A judgment of acquittal is final and is no longer reviewable.[11] It is also immediately executory and the State may not seek its review without placing the accused in double jeopardy.[12] We had occasion to fully explain the reason behind the double jeopardy rule in People v. Velasco[13]:

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x x." Thus *Green* expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty,

is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Applying all these principles, the present Rule 45 petition must necessarily fail. Even under our most liberal reading, we cannot treat the petition as a Rule 65 petition, as it raises no jurisdictional error that can invalidate a verdict of acquittal.

The petition itself states that it was formally filed under Rule 45 of the Rules of Court and seeks to reverse and set aside the decision of the Sandiganbayan.[18] Thus, the petition's clear and unequivocal intention to seek a review on the merits of the Sandiganbayan judgment of acquittal puts it on a direct collision course with the constitutional proscription on double jeopardy. This is more than enough reason to deny the petition.*1avvphi1*

Additionally, a Rule 45 petition can only address pure questions of law, not factual errors, committed by the tribunal below. In this petition, the People raise factual errors, or to be exact, "appreciation of evidence" errors that the descriptive term "gravely erred" cannot convert into jurisdictional errors. Specifically, the petition alleges: (1) that the Sandiganbayan gravely erred in taking judicial notice of the alleged laws of the US; (2) that the Sandiganbayan gravely erred in relying solely on the testimonies of the defense witnesses as to the existence and effectivity of the laws of the US; and (3) that the Sandiganbayan gravely erred in not appreciating the prosecution's presented evidence on the guilt of the respondents.

We add that any error that the Sandiganbayan might have committed in appreciating the evidence presented at the trial are mere errors of judgment and do not rise to the level of jurisdictional errors despite the allegation that the Sandiganbayan had "gravely erred" in appreciating the evidence. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[19] That an abuse itself must be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.[20] The mere fact, too, that a court erroneously decides a case does not necessarily deprive it of jurisdiction.[21]

PEOPLE OF THE PHILIPPINES, THE SECRETARY OF JUSTICE, DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE, CHIEF STATE PROSECUTOR JOVENCITO ZUÑO, STATE PROSECUTORS PETER L. ONG and RUBEN A. ZACARIAS; 2ND ASSISTANT CITY PROSECUTOR CONRADO M. JAMOLIN and CITY PROSECUTOR OF QUEZON CITY CLARO ARELLANO *v.* PANFILO M. LACSON
G.R. No. 149453, April 1, 2003, CALLEJO, SR., *J.*

The raison d' etre for the requirement of the express consent of the accused to a provisional dismissal of a criminal case is to bar him from subsequently asserting that the revival of the criminal case will place him in double jeopardy for the same offense or for an offense necessarily included therein.

FACTS:

Petitioners filed a motion for reconsideration of the Resolution remanding this case to the RTC for the determination of several factual issues relative to the application of Section 8 of Rule 117 of the Revised Rules of Criminal Procedure on the dismissal of criminal cases filed against Panfilo Lacson

and his co-accused with the said court. In the criminal cases, the respondent and his co-accused were charged with multiple murder for the shooting and killing of eleven male victims.

The Court ruled that the provisional dismissal of criminal cases were with the express consent of the respondent as he himself moved for said provisional dismissal when he filed his motion for judicial determination of probable cause and for examination of witnesses. The petitioners contend that Section 8, Rule 117 of the Revised Rules of Criminal Procedure is not applicable in the present case and the time-bar in said rule should not be applied retroactively.

ISSUE:

Whether the provisional dismissal issued by the Court was proper

RULING:

No. Section 8, Rule 117 of the Revised Rules of Criminal Procedure provides that a case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party. The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

Having invoked said rule before the petitioners-panel of prosecutors and before the CA, the respondent is burdened to establish the essential requisites of the first paragraph thereof, namely:

1. The prosecution with the express conformity of the accused or the accused moves for a provisional (*sin perjuicio*) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case;
2. The offended party is notified of the motion for a provisional dismissal of the case;
3. The court issues an order granting the motion and dismissing the case provisionally;
4. The public prosecutor is served with a copy of the order of provisional dismissal of the case.

Express consent to a provisional dismissal is given either *viva voce* or in writing. It is a positive, direct, unequivocal consent requiring no inference or implication to supply its meaning. Where the accused writes on the motion of a prosecutor for a provisional dismissal of the case "no objection" or "with my conformity," the writing amounts to express consent of the accused to a provisional dismissal of the case. The mere inaction or silence of the accused to a motion for a provisional dismissal of the case or his failure to object to a provisional dismissal does not amount to express consent.

A motion of the accused for a provisional dismissal of a case is an express consent to such provisional dismissal. If a criminal case is provisionally dismissed with the express consent of the accused, the case may be revived only within the periods provided in the new rule. If a criminal case is provisionally dismissed without the express consent of the accused or over his objection, the new rule would not apply. The case may be revived even beyond the prescribed periods subject to the right of the accused to oppose the same on the ground of double jeopardy or that such revival or refiling is barred by the statute of limitations.

Respondent has failed to prove that the first and second requisites of the first paragraph of the new rule were present when Judge Agnir, Jr. dismissed Criminal Cases Nos. Q-99-81679 to Q-99-81689. The prosecution did not file any motion for the provisional dismissal of the said criminal cases. The respondent did not pray for the dismissal, provisional or otherwise, of Criminal Cases Nos. Q-99-81679 to Q-99-81689. Neither did he ever agree, impliedly or expressly, to a mere provisional dismissal of the cases

ARIEL M. LOS BAÑOS, on behalf of P/Supt. Victor Arevalo, SPO2 Marcial Olympia, SPO1 Rocky Mercene and PO1 Raul Adlawan, and in his personal capacity, *Petitioner*, vs. JOEL R. PEDRO, *Respondent*.
G.R. No. 173588 , EN BANC , April 22, 2009, BRION, *J.*

To recapitulate, quashal and provisional dismissal are different concepts whose respective rules refer to different situations that should not be confused with one another. If the problem relates to an intrinsic or extrinsic deficiency of the complaint or information, as shown on its face, the remedy is a motion to quash under the terms of Section 3, Rule 117. All other reasons for seeking the dismissal of the complaint or information, before arraignment and under the circumstances outlined in Section 8, fall under provisional dismissal.

Thus, we conclude that Section 8, Rule 117 does not apply to the reopening of the case that the RTC ordered and which the CA reversed; the reversal of the CA's order is legally proper.

FACTS:

Joel Pedro was charged in court for carrying a loaded firearm without authorization from the COMELEC a day before the elections. Pedro, then filed a Motion to Quash after his Motion for Preliminary Investigation did not materialize. The RTC granted the quashal

The RTC reopened the case for further proceedings in which Pedro objected to citing Rule 117, Sec. 8 on provisional dismissal, arguing that the dismissal had become permanent.

The public prosecutor manifested his express conformity with the motion to reopen the case saying that the provision used applies where both the prosecution and the accused mutually consented to the dismissal of the case, or where the prosecution or the offended party failed to object to the dismissal of the case, and not to a situation where the information was quashed upon motion of the accused and over the objection of the prosecution. The RTC, thus, set Pedro's arraignment date.

Pedro filed with the CA a petition for certiorari and prohibition to nullify the RTC's mandated reopening.

The CA, at first granted the reopening of the case but through Pedro's Motion for Reconsideration, his argument that a year has passed by from the receipt of the quashal order, the CA's decision was reversed.

Petitioner now argues using the same argument of the public prosecutor.

ISSUE: Whether the rule on provision dismissal is applicable. (NO)

RULING:

The SC granted the petition and remanded the case to the RTC.

An examination of the whole Rule tells us that a dismissal based on a motion to quash and a provisional dismissal are far different from one another as concepts, in their features, and legal consequences. While the provision on provisional dismissal is found within Rule 117 (entitled Motion to Quash), it does not follow that a motion to quash results in a provisional dismissal to which Section 8, Rule 117 applies.

A first notable feature of Section 8, Rule 117 is that it does not exactly state what a provisional dismissal is. The modifier "provisional" directly suggests that the dismissals which Section 8 essentially refers to are those that are temporary in character (i.e., to dismissals that are without prejudice to the re-filing of the case), and not the dismissals that are permanent (i.e., those that bar the re-filing of the case). Based on the law, rules, and jurisprudence, permanent dismissals are those barred by the principle of double jeopardy,[22] by the previous extinction of criminal liability,[23] by the rule on speedy trial,[24] and the dismissals after plea without the express consent of the accused.[25] Section 8, by its own terms, cannot cover these dismissals because they are not provisional.

A second feature is that Section 8 does not state the grounds that lead to a provisional dismissal. This is in marked contrast with a motion to quash whose grounds are specified under Section 3. The delimitation of the grounds available in a motion to quash suggests that a motion to quash is a class in itself, with specific and closely-defined characteristics under the Rules of Court. A necessary consequence is that where the grounds cited are those listed under Section 3, then the appropriate remedy is to file a motion to quash, not any other remedy. Conversely, where a ground does not appear under Section 3, then a motion to quash is not a proper remedy. A motion for provisional dismissal may then apply if the conditions required by Section 8 obtain.

A third feature, closely related to the second, focuses on the consequences of a meritorious motion to quash. This feature also answers the question of whether the quashal of an information can be treated as a provisional dismissal. Sections 4, 5, 6, and 7 of Rule 117 unmistakably provide for the consequences of a meritorious motion to quash. Section 4 speaks of an amendment of the complaint or information, if the motion to quash relates to a defect curable by amendment. Section 5 dwells on the effect of sustaining the motion to quash - the complaint or information may be re-filed, except for the instances mentioned under Section 6. The latter section, on the other hand, specifies the limit of the re-filing that Section 5 allows – it cannot be done where the dismissal is based on extinction of criminal liability or double jeopardy. Section 7 defines double jeopardy and complements the ground provided under Section 3(i) and the exception stated in Section 6.*1awwphi1*

Rather than going into specifics, Section 8 simply states when a provisional dismissal can be made, i.e., when the accused expressly consents and the offended party is given notice. The consent of the accused to a dismissal relates directly to what Section 3(i) and Section 7 provide, i.e., the conditions for dismissals that lead to double jeopardy. This immediately suggests that a dismissal under Section 8 – i.e., one with the express consent of the accused – is not intended to lead to double jeopardy *as provided under Section 7*, but nevertheless creates a bar to further prosecution under the special terms of Section 8.

This feature must be read with Section 6 which provides for the effects of sustaining a motion to quash – the dismissal is not a bar to another prosecution for the same offense – unless the basis for the dismissal is the extinction of criminal liability and double jeopardy. These unique terms, read in relation with Sections 3(i) and 7 and compared with the consequences of Section 8, carry unavoidable implications that cannot but lead to distinctions between a quashal and a provisional dismissal under Section 8. They stress in no uncertain terms that, save only for what has been provided under Sections 4 and 5, the governing rule when a motion to quash is meritorious are the terms of Section 6. The failure of the Rules to state under Section 6 that a Section 8 provisional dismissal is a bar to further prosecution shows that the framers did not intend a dismissal based on a motion to quash and a provisional dismissal to be confused with one another; Section 8 operates in a world of its own separate from motion to quash, and merely provides a time-bar that uniquely applies to dismissals other than those grounded on Section 3. Conversely, when a dismissal is pursuant to a motion to quash under Section 3, Section 8 and its time-bar does not apply.

CARMELO C. BERNARDO *v.* PEOPLE OF THE PHILIPPINES and F.T. YLANG-YLANG MARKETING CORPORATION
G.R. No. 166980, April 4, 2007, CARPIO MORALES, *J.*

The trial court has the duty to rule on the evidence presented by the prosecution against all the accused and to render its judgment accordingly. It should not wait for the fugitives' re-appearance or re-arrest. They are deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.

FACTS:

Bernardo was charged before the MeTC of Manila with six counts of violation of B.P. 22 for issuing six postdated checks in equal amounts. Upon arraignment, Bernardo pleaded "not guilty" to the offenses charged. At the pre-trial conference, Bernardo failed to appear despite notice, prompting the MeTC to issue a warrant of arrest against him and set the cases for trial *in absentia*.

After the prosecution presented its first witness, Bernardo filed a motion to quash on the ground that the crimes charged against him do not constitute an offense but the MeTC denied the motion.

The MeTC found Bernardo guilty of violating B.P. 22 in all the cases. On appeal, the RTC of Manila affirmed the decision with modification. The CA denied Bernardo's petition due course for having been filed 15 days late and for failure to attach the MeTC Decision and other pertinent documents.

ISSUE:

Whether the trial *in absentia* conducted by the MeTC was proper

RULING:

Yes. Since Bernardo failed to perfect his appeal, the RTC judgment had become final and executory. This leaves it unnecessary to dwell on petitioner's assertion that he was denied due process of law and the right to counsel before the trial court.

The requisites of a valid trial *in absentia*, *viz*, (1) the accused has already been arraigned, (2) he has been duly notified of the trial, and (3) his failure to appear is unjustifiable, are, as reflected above,

present in the case. The holding of trial *in absentia* is authorized under Section 14 (2), Article III of the 1987 Constitution which provides that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

The escape should have been considered a waiver of their right to be present at their trial, and the inability of the court to notify them of the subsequent hearings did not prevent it from continuing with their trial. They were deemed to have received notice. The same fact of their escape made their failure to appear unjustified because they have, by escaping, placed themselves beyond the pale and protection of the law. The trial against the fugitives, just like those of the others, should have been brought to its ultimate conclusion

HARRY GO, *et al. v.* PEOPLE OF THE PHILIPPINES and HIGHDONE COMPANY, LTD., *et al.*
G.R. No. 185527, July 18, 2012, Perlas-Bernabe, J.

Section 17, Rule 23 of the Rules of Court on the taking of depositions of witnesses in civil cases cannot apply suppletorily to criminal cases since there is a specific provision in the Rules of Court with respect to the taking of depositions of prosecution witnesses in criminal cases, which is primarily intended to safeguard the constitutional rights of the accused to meet the witness against him face to face.

FACTS:

Harry Go, Tonny Ngo, Jerry Ngo and Jane Go were charged for Other Deceits for conspiring in defrauding Highdone Company Ltd. represented by Li Luen Ping. All accused said to Li Luen Ping that they have chattels such as machinery, spare parts, equipment and raw materials installed and fixed in the premises of BGB Industrial Textile Mills Factory, and executed a Deed of Mortgage for a consideration of the amount of $464,266.90 in favor of ML Resources and Highdone Company Ltd. The accused represented that the deed is a first mortgage when in fact it had been mortgaged and foreclosed by China Bank. Li Luen Ping, prosecution's complaining witness, is from Laos, Cambodia, who traveled from his home country back to the Philippines in order to attend the hearing. However, trial dates were postponed due to his unavailability. The private prosecutor filed a Motion to Take Oral Deposition of Li Luen Ping, alleging that he was being treated for lung infection at the Cambodia Charity Hospital and that he could not travel to the Philippines by reason of ill health which the court granted. Hence, the petitioners filed a Petition for *Certiorari* which the RTC granted stating that Section 17, Rule 23 on the taking of depositions of witnesses in civil cases cannot apply suppletorily to the case since there is a specific provision in the Rules of Court with respect to the taking of depositions of prosecution witnesses in criminal cases, which is primarily intended to safeguard the constitutional rights of the accused to meet the witness against him face to face.

ISSUE:

Whether or not the taking of the deposition of Li Luen Ping infringed the right of the petitioners to a public trial.

RULING:

Yes. The examination of witnesses must be done orally before a judge in open court. This is true especially in criminal cases where the Constitution secures to the accused his right to a public trial and to meet the witnessess against him face to face. The requirement is the "safest and most

satisfactory method of investigating facts" as it enables the judge to test the witness' credibility through his manner and deportment while testifying. It is not without exceptions, however, as the Rules of Court recognizes the conditional examination of witnesses and the use of their depositions as testimonial evidence in lieu of direct court testimony.
But for purposes of taking the deposition in criminal cases, more particularly of a prosecution witness who would forseeably be unavailable for trial, the testimonial examination should be made before the court, or at least before the judge, where the case is pending as required by the clear mandate of Section 15, Rule 119 of the Revised Rules of Criminal Procedure.

Since the conditional examination of a prosecution witness must take place at no other place than the court where the case is pending, the RTC properly nullified the MeTC's orders granting the motion to take the deposition of Li Luen Ping before the Philippine consular official in Laos, Cambodia. The condition of the private complainant being sick and of advanced age falls within the provision of Section 15 Rule 119 of the Rules of Court. However, said rule substantially provides that he should be conditionally examined before the court where the case is pending. Thus, the Court concludes that the language of Section 15 Rule 119 must be interpreted to require the parties to present testimony at the hearing through live witnesses, whose demeanor and credibility can be evaluated by the judge presiding at the hearing, rather than by means of deposition. Nowhere in the said rule permits the taking of deposition outside the Philippines whether the deponent is sick or not.

Certainly, to take the deposition of the prosecution witness elsewhere and not before the very same court where the case is pending would not only deprive a detained accused of his right to attend the proceedings but also deprive the trial judge of the opportunity to observe the prosecution witness' deportment and properly assess his credibility, which is especially intolerable when the witness' testimony is crucial to the prosecution's case against the accused

RIMBERTO T. SALVANERA *v.* PEOPLE OF THE PHILIPPINES and LUCITA PARANE
G.R. No. 143093, May 21, 2007, **PUNO, *C.J.***

In the discharge of an accused in order that he may be a state witness, the requisites are: (1) Two or more accused are jointly charged with the commission of an offense; (2) The motion for discharge is filed by the prosecution before it rests its case; (3) The prosecution is required to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge; (4) The accused gives his consent to be a state witness; and (5) RTC is satisfied that: a) There is absolute necessity for the testimony of the accused whose discharge is requested; b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; c) The testimony of said accused can be substantially corroborated in its material points; d) Said accused does not appear to be the most guilty; and, e) Said accused has not at any time been convicted of any offense involving moral turpitude.

FACTS:

Salvanera, et al. are charged with the murder of Ruben Parane. All the accused have been arrested and detained, except Lungcay. The prosecution moved for the discharge of accused Abutin and Tampelix, to serve as state witnesses.

ISSUE:

Whether the discharge of accused Abutin and Tampelix to become state witnesses was proper

RULING:

Yes. To require the two witnesses to corroborate the testimony of Abutin and Tampelix on the exact same points is to render nugatory the other requisite that "there must be no other direct evidence available for the proper prosecution of the offense committed, except the testimony of the state witness." The corroborative evidence required by the Rules does not have to consist of the same evidence as will be testified on by the proposed state witnesses. A conspiracy is more readily proved by the acts of a fellow criminal than by any other method. If it is shown that the statements of the conspirator are corroborated by other evidence, it is convincing proof of veracity. Even if the confirmatory testimony only applies to some particulars, it can be inferred that the witness has told the truth in other respect. It is enough that the testimony of a co-conspirator is corroborated by some other witness or evidence. The testimonies of Abutin and Tampelix are corroborated on important points by each other's testimonies and the circumstances disclosed through the testimonies of the other prosecution witnesses, and "to such extent that their trustworthiness becomes manifest.

PEOPLE OF THE PHILIPPINES *v*. THE HONORABLE SANDIGANBAYAN (FOURTH DIVISION), ANTONIO P. BELICENA, ULDARICO P. ANDUTAN, JR., RAUL C. DE VERA, ROSANNA P. DIALA AND JOSEPH A. CABOTAJE
G.R. Nos. 185729-32, June 26, 2013, ABAD, J.

The decision to employ an accused as a state witness must necessarily originate from the public prosecutors whose mission is to obtain a successful prosecution of the accused before the courts.

FACTS:

Homero Mercado, was the President of JAM Liner, Inc. and applied with the DOJ for immunity as state witness. The DOJ favorably acted on the application and granted immunity to Mercado. Since the investigation of the case fell within the authority of the Ombudsman, the latter charged him before the Sandiganbayan's Fourth Division. Mercado filed a MR or reinvestigation before the Ombudsman, citing the DOJ's grant of immunity to him. Ombudsman executed an Immunity Agreement with Mercado and filed a motion to discharge Mercado. The Sandiganbayan denied it. The Ombudsman filed a MR but was denied.

ISSUE:

Whether the Sandiganbayan gravely abused its discretion in refusing to recognize the immunity.

RULING:

Yes. The question before the Sandiganbayan was whether Mercado met, from its point of view, the requirements of Section 17, Rule 119 for the discharge of an accused to be a state witness. The authority to grant immunity is not an inherent judicial function. Congress has vested such power in the Ombudsman as well as in the Secretary of Justice. The courts do not as a rule have a vision of the true strength of the prosecution's evidence until after the trial is over. Courts should generally defer

to the judgment of the prosecution and deny a motion to discharge an accused so he can be used as a witness only in clear cases of failure to meet the requirements of Section 17, Rule 119.

The Sandiganbayan held that Mercado's testimony is not absolutely necessary because the state has other direct evidence that may prove the offenses charged. It held that Mercardo's testimony would only help (1) identify numerous documents and (2) disclose matters that are essentially already contained in such documents. But the records, particularly Mercado's consolidated affidavit, show that his testimony if true could be indispensable in establishing the circumstances that led to the preparation and issuance of fraudulent tax credit certificates. Nobody appears to be in a better position to testify on this than he, as president of JAM Liner, Inc., the company to which those certificates were issued. The criminal informations in these cases charge Belicena, et al. with having conspired in issuing the fraudulent tax credit certificates. Where a crime is contrived in secret, the discharge of one of the conspirators is essential so he can testify against the others. No one can underestimate Mercado's testimony since he alone can provide a detailed picture of the fraudulent scheme that went into the issuance of the tax credit certificates. The documents can show the irregularities but not the detailed events that led to their issuance. Mercado's testimony can fill in the gaps in the evidence.

JOCELYN ASISTIO y CONSINO *v.* PEOPLE OF THE PHILIPPINES AND MONICA NEALIGA
G.R. No. 200465, April 20, 2015, PERALTA, *J.*

The demurrer to evidence in criminal cases, is filed after the prosecution had rested its case; and when the same is granted, it calls for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal.

FACTS:

Jocelyn Asistio was charged with violation of Sec 46 of RA 6938. The prosecution sought to prove that Jocelyn, then Chairperson of the A. Mabini Elementary School Teachers Multi-Purpose Cooperative, had entered into an exclusive dealership agreement with Coca-Cola for the sale of softdrink products at the same school. After the presentation and offer of evidence by the prosecution, she moved to dismiss the case by way of demurrer to evidence with prior leave of court. She argued that RTC does not have jurisdiction over the case, as the crime charged does not carry with it a sanction for which she can be held criminally liable. The RTC dismissed the case for lack of jurisdiction. The CA reversed.

ISSUE:

Whether the RTC's dismissal of the charge amounted to an acquittal.

RULING:

No. In *Gutib v. CA (371 Phil. 293, 300, 1999)*: Demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The Court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is

competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. The dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.

However, the RTC granted the demurrer to evidence and dismissed the case not for insufficiency of evidence, but for lack of jurisdiction over the offense charged. The RTC did not decide the case on the merits, let alone resolve the issue of guilt or innocence based on the evidence proffered by the prosecution. The RTC Order of dismissal does not operate as an acquittal, hence, may still be subject to ordinary appeal. The accused-appellee is also of a mistaken view that the dismissal of the case against her is an acquittal. But acquittal is always based on the merits, that is, the defendant is acquitted because the evidence does not show that the defendant's guilt is beyond reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc

GREGORIO SINGIAN, JR., *Petitioner*, -versus- SANDIGANBAYAN (3RD DIVISION), THE PEOPLE OF THE PHILIPPINES, and THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *Respondents*.
G.R. Nos. 195011-19, SECOND DIVISION, September 30, 2013, DEL CASTILLO, *J.*

The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. Here, the Sandiganbayan was convinced that all three elements of Section 3(g), RA 3019 were satisfactorily established. Hence, it correctly denied the demurrer to evidence.

FACTS:

The Committee found that the loans extended to ISI bore characteristics of behest loans specifically for not having been secured with sufficient collaterals and obtained with undue haste. Singian, Jr. was charged. After the presentation of its testimonial and documentary evidence, the prosecution rested its case and filed its Formal Offer of Exhibits. Singian, Jr. with prior leave, filed a demurrer to evidence. The prosecution noted that Singian, Jr.'s arguments in his demurrer to evidence constitute matters of defense which should be passed upon only after trial on the merits. The Sandiganbayan denied the demurrer to evidence.

ISSUE:

Whether the Sandiganbayan erred in denying the demurrer to evidence. (NO)

RULING:

The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according

to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.

The resolution of a demurrer to evidence should be left to the exercise of sound judicial discretion. A lower court's order of denial shall not be disturbed, that is, the appellate courts will not review the prosecution's evidence and precipitately decide whether such evidence has established the guilt of the accused beyond a reasonable doubt, unless accused has established that such judicial discretion has been gravely abused, there by amounting to a lack or excess of jurisdiction. The Sandiganbayan was convinced that all three elements of Section 3(g), RA 3019 were satisfactorily established. PNB and ISI entered into several contracts or loan transactions. The Sandiganbayan also assessed that petitioner conspired with his co-accused in defrauding the government considering: (1) the frequency of the loans or closeness of the dates at which they were granted; (2) the quantity of the loans granted; (3) the failure of the bank to verify and to take any action on the failure of ISI to put up additional capitalization and additional collaterals; and (4) the eventual absence of any action by the Bank to collect full payment from ISI.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- EMELIO TOLENTINO Y ESTRELLA AND JESUS TRINIDAD Y MARAVILLA, *Accused-Appellants*.
G.R. No. 176385, THIRD DIVISION, February 26, 2008, CHICO-NAZARIO, *J*.

The filing of a demurrer to evidence without leave of court is an unqualified waiver of the right to present evidence for the accused. Here, Tolentino and Trinidad filed a demurrer to evidence without leave of court. Hence, they may no longer present evidence after the denial of the demurrer to evidence.

FACTS:

Tolentino and Trinidad were charged for crimes of murder and two counts of frustrated murder. The prosecution presented nine witnesses and also presented documentary evidence. The prosecution rested its case and made a formal offer of evidence. Tolentino and Trinidad filed a demurrer to evidence, without leave of court. The RTC denied and rendered a decision finding them guilty of the crimes charged. The CA affirmed.

ISSUE:

Whether Tolentino and Trinidad may present evidence after the denial of the demurrer to evidence. (NO)

RULING:

Under Section 15, Rule 119 of the 1985 Rules of Criminal Procedure, it is stated that when an accused files a demurrer to evidence without leave of court and the same is denied, he waives his right to present evidence and submits the case for judgment on the basis of the evidence of the prosecution. When the accused moves for dismissal on the ground of insufficiency of evidence of the prosecution evidence, he does so in the belief that said evidence is insufficient to convict and, therefore, any need for him to present any evidence is negated. An accused cannot be allowed to wager on the outcome of judicial proceedings by espousing inconsistent viewpoints whenever dictated by convenience. The purpose behind the rule is also to avoid the dilatory practice of filing motions for dismissal as a demurrer to the evidence and, after denial thereof, the defense would then claim the right to present its evidence.

When the trial court disallowed the appellants to present evidence on their behalf, it properly applied Section 15, Rule 119 of the 1985 Rules of Criminal Procedure. Not even the gravity of the penalty for a particular offense can change this rule. The filing of the demurrer to evidence without leave of court and its subsequent denial results in the submission of the case for judgment on the basis of the evidence on record. Considering that the governing rules on demurrer to evidence is a fundamental component of criminal procedure, respondent judge had the obligation to observe the same, regardless of the gravity of the offense charged. It is not for him to grant concessions to the accused who failed to obtain prior leave of court. Upon the denial of the demurrer to evidence in this case, the accused, who failed to ask for leave of court, shall waive the right to present evidence in his behalf.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- SANDIGANBAYAN (FIRST DIVISION), VICTORINO A. BASCO, ROMEO S. DAVID, and ROGELIO L. LUIS, *Respondents*.
G.R. No. 164577, SECOND DIVISION, July 5, 2010, MENDOZA, *J.*

Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion. Unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its decision to grant or deny the demurrer may not be disturbed. Here, petitioner has not attributed any commission of grave abuse of discretion on the part of Sandiganbayan in issuing the questioned resolution.

FACTS:

Basco, David, and Luis were charged for violation of RA 3019. The Sandiganbayan issued a pre-trial order identifying the issues. During the trial, the prosecution presented its lone witness. Thereafter, the prosecution filed its Formal Offer of Evidence. After the evidence were admitted, the prosecution rested its case. Instead of presenting their evidence, they filed their respective motions for leave to file their demurrer to evidence. The Sandiganbayan denied the motions. They thus filed a MR which was later granted.

ISSUE:

Whether the Sandiganbayan erred in granting the demurrer to evidence. (NO)

RULING:

The rule barring an appeal from a judgment of acquittal is not absolute. Exceptions are: xxx (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused' demurrer to evidence. Although the dismissal order consequent to a demurrer to evidence is not subject to appeal, it is still reviewable but only by certiorari under Rule 65 of the Rules of Court. In such a case, the factual findings of the trial court are conclusive upon the reviewing court, and the only legal basis to reverse and set aside the order of dismissal upon demurrer to evidence is by a clear showing that the trial court, in acquitting the accused, committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus, rendering the assailed judgment void.

The demurrer to evidence in criminal cases is "filed after the prosecution had rested its case." As such, it calls "for an *appreciation of the evidence* adduced by the prosecution *and its sufficiency* to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits,

tantamount to an acquittal of the accused." Accordingly, unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its decision to grant or deny the demurrer may not be disturbed. Petitioner has not attributed any commission of grave abuse of discretion on the part of Sandiganbayan in issuing the questioned resolution, on the mistaken assumption that it can assail the resolution on purely legal questions. A judgment of acquittal cannot be reopened or appealed because of the doctrine that nobody can be put twice in jeopardy for the same offense.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- JOVEN DE GRANO, ARMANDO DE GRANO, DOMINGO LANDICHO and ESTANISLAO LACABA, *Respondents.*
G.R. No. 167710, THIRD DIVISION, June 5, 2009, PERALTA, *J.*

Once an accused jumps bail or flees to a foreign country, or escapes from prison or confinement, he loses his standing in court; and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court. Here, when the Decision was promulgated, only Estanislao Lacaba was present. Hence, the RTC clearly exceeded its jurisdiction when it entertained the joint MR with respect to the respondents who were at large.

FACTS:

De Grano, et al. were charged with murder. They filed a motion for bail but RTC found them guilty of the crime as charged. Through the Manila prosecutor, the Republic filed a petition for certiorari arguing that De Grano, et al., having deliberately evaded arrest after being denied bail and deliberately failing to attend the promulgation of the Decision despite due notice, lost the right to move for reconsideration of their conviction. De Grano, et al. maintain that while they were not present during the promulgation of the RTC Decision, Estanislao, who was under police custody, attended the promulgation of the said Decision. Thus, when they filed their Joint MR, which included that of Estanislao, the RTC was not deprived of its authority to resolve the joint motion.

ISSUE:

Whether the RTC exceeded its jurisdiction when it entertained the joint MR. (YES)

RULING:

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within 15 days from promulgation of judgment however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen 15 days from notice.

When the Decision was promulgated, only Estanislao Lacaba was present. Subsequently thereafter, without surrendering and explaining the reasons for their absence, Joven, Armando, and Domingo joined Estanislao in their joint MR. In blatant disregard of the Rules, the RTC not only failed to cause the arrest of the respondents who were at large, it also took cognizance of the joint motion. The RTC clearly exceeded its jurisdiction when it entertained the joint Motion for Reconsideration with respect to the respondents who were at large. It should have considered the joint motion as a MR solely filed by Estanislao. Being at large, Joven and Domingo have not regained their standing in court. Once an accused jumps bail or flees to a foreign country, or escapes from prison or confinement, he

loses his standing in court; and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.

MARINO B. ICDANG, *Petitioner*, -versus- SANDIGANBAYAN (Second Division) and PEOPLE OF THE PHILIPPINES, *Respondents*.
G.R. No. 185960, FIRST DIVISION, January 25, 2012, VILLARAMA, JR., *J.*

While notice must be served on both accused and his counsel, the latter's absence during the promulgation of judgment would not affect the validity of the promulgation. Hence, the Sandiganbayan did not gravely abuse its discretion when it rendered its judgment of conviction in the absence of Icdang's counsel.

FACTS:

Marino Icdang was the Regional Director of the OSCC. A Special Audit Team was formed and noted that Icdang was granted cash advances which remained unliquidated. He never denied that he received the amount. The Office of the Ombudsman charged him for violation of RA 3019. The Sandiganbayan convicted Icdang of malversation. Then Icdang filed a MR requesting that he be given another chance to present his evidence, stating that his inability to attend the trial was due to financial constraints such that even when some of the scheduled hearings were held in Davao City and Cebu City, he still failed to attend the same.

ISSUE:

Whether the Sandiganbayan gravely abused its discretion when it rendered its judgment of conviction. (NO)

RULING:

While notice must be served on both accused and his counsel, the latter's absence during the promulgation of judgment would not affect the validity of the promulgation. No substantial right of the accused on the merits was prejudiced by such absence of his counsel when the sentence was pronounced.

Icdang never raised issue on the fact that his counsel was not around during the promulgation of the judgment in his MR which merely prayed for reopening of the case to enable him to present liquidation documents and receipts, citing financial constraints as the reason for his failure to attend the scheduled hearings. The defense was granted ample opportunity to present their evidence as in fact several postponements were made on account of Atty. Iral's health condition and Icdang's lack of financial resources to cover transportation costs. The Sandiganbayan exercised utmost leniency and compassion and even appointed a counsel *de oficio* when petitioner cited lack of money to pay for attorney's fees. In those instances when either Icdang or his counsel was present in court, the documentary evidence listed during the pre-trial, allegedly in the possession of Icdang and which he undertook to present at the trial, were never produced in court at any time. If indeed these documents existed, Icdang could have readily submitted them to the court considering the length of time he was given to do so. From the fact that not a single document nor witness was produced by the defense in a span of four years afforded them by the Sandiganbayan, shows that petitioner did not have those evidence in the first place.

LOIDA M. JAVIER, *Petitioner*, -versus- PEPITO GONZALES, *Respondent*.
G.R. No. 193150, FIRST DIVISION, January 23, 2017, SERENO, *C.J.*

If the accused has been notified of the date of promulgation, but does not appear, the promulgation of judgment in absentia is warranted. Here, Gonzales did not appear despite notice, and without offering any justification for his absence. Hence, Judge Buted's Decision convicting respondent was validly promulgated.

FACTS:

Gonzales was charged with murder with frustrated murder and multiple attempted murder. Upon motion by private complainant Macatiag (sister of the deceased victim), the case was transferred to the RTC which was then presided by Judge Buted. Thereafter, trial on the merits ensued. On the scheduled date of promulgation, Gonzales failed to appear. His lawyer, Atty. Benitez, personally filed a "Withdrawal of Counsel" with his client's conformity. The promulgation was rescheduled but Gonzales still failed to appear without any justification. Judge Buted appointed a counsel *de officio* in lieu of Atty. Benitez. The Branch Clerk of Court thereafter read the dispositive portion of Judge Buted's Decision in the presence of the public prosecutor, the counsel *de officio,* and the heirs of Macatiag. Macatiag had been killed just a day before the first promulgation date, and Gonzales was also an accused in her killing. Gonzales was convicted of the murder charges.

In less than a month after the judgment of conviction was rendered, Gonzales filed, through Atty. Benitez, an Omnibus Motion asking that the said judgment be reconsidered and set aside. Gonzales argued that he had not been properly notified of the promulgation of judgment and that he had not been represented by counsel. The trial court, now presided by Judge Soluren, granted the motion and set aside the judgment of conviction. Javier, Macatiag's daughter, filed a petition for *certiorari* under Rule 65 with the CA citing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Soluren. The CA, however, dismissed the petition.

ISSUE:

1. Whether there was a valid promulgation of judgment by Judge Buted in her prior Decision of conviction. (YES)

2. Whether Judge Soluren's subsequent judgment of acquittal is valid. (NO)

RULING:

1. Judge Buted's Decision convicting respondent was validly promulgated. Section 6, Rule 120 of the Revised Rules of Criminal Procedure allows a court to promulgate a judgment *in absentia* and gives the accused the opportunity to file an appeal within a period of fifteen (15) days from notice to the latter or the latter's counsel; otherwise, the decision becomes final.

   Records show that Gonzales was properly informed of the promulgation scheduled on 15 December 2005. The RTC Order dated 30 November 2005 documents the presence of his counsel during the hearing. It is an established doctrine that notice to counsel is notice to client. In addition, the Return of Service states that the Order and Notice of Promulgation were personally delivered to respondent's address.

During the promulgation of judgment on 15 December 2005, when Gonzales did not appear despite notice, and without offering any justification for his absence, the trial court should have immediately promulgated its Decision. The promulgation of judgment *in absentia is* mandatory pursuant to the fourth paragraph of Section 6, Rule 120 of the Rules of Court.

If the accused has been notified of the date of promulgation, but does not appear, the promulgation of judgment *in absentia* is warranted. This rule is intended to obviate a repetition of the situation in the past when the judicial process could be subverted by the accused by jumping bail to frustrate the promulgation of judgment. The only essential elements for its validity are as follows: (a) the judgment was recorded in the criminal docket; and (b) a copy thereof was served upon the accused or counsel.

Gonzales was not left without remedy. However, instead of surrendering and filing a motion for leave to explain his unjustified absence pursuant to the fifth paragraph of Section 6, Rule 120, Gonzales, through Atty. Benitez, filed an Omnibus Motion before the RTC praying that the promulgation be set aside. We cannot countenance this blatant circumvention of the Rules.

2. Judge Soluren's Decision acquitting respondent is void and has no legal effect. Judge Soluren acted with grave abuse of discretion amounting to lack or excess of jurisdiction when she gave due course to Gonzales' Omnibus Motion. Aside from being the wrong remedy, the motion lacked merit.

   The filing of a motion for reconsideration to question a decision of conviction can only be resorted to if the accused did not jump bail, but appeared in court to face the promulgation of judgment. Gonzales did not appear during the scheduled promulgation and was deemed by the judge to have jumped bail. The fifth paragraph of Section 6, Rule 120, states that if the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in the Rules against the judgment, and the court shall order his arrest.

   In utter disregard of this Court's circulars, Judge Soluren capriciously, whimsically, and arbitrarily took cognizance of Gonzales' Omnibus Motion, granted it, and rendered a totally opposite Decision of acquittal. What she should have done was dismiss the Omnibus Motion outright, since Judge Buted's Decision of conviction was already subject to automatic review by the CA. By acting on the wrong remedy, which led to the reversal of the conviction, Judge Soluren contravened the express orders of this Court. Her blatant abuse of authority was so grave and so severe that it deprived the court of its very power to dispense justice. Considering that Judge Soluren's order of acquittal was void from the very beginning, it necessarily follows that the CA ruling dismissing the Petition for *Certiorari* must likewise be reversed and set aside.

MUNIB S. ESTINO and ERNESTO G. PESCADERA, *Petitioners*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. Nos. 163957-58, SECOND DIVISION, April 7, 2009, VELASCO, JR., *J.*

Rule 121 of the Rules of Court allows the conduct of a new trial before a judgment of conviction becomes final when new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

Here, although the documents offered by Estino and Pescadera are strictly not newly discovered, they were mistaken in their belief that its production during trial was unnecessary. The situation is peculiar, since they were precluded from presenting exculpatory evidence during trial upon the honest belief that they were being tried for nonpayment of RATA under the 1999 budget. Hence, the Sandiganbayan erred in denying Estino and Pescadera's MR and MNT.

FACTS:

Estino and Pescadera were charged for violation of RA 3019. During trial, Balabaran testified that based on the disbursement vouchers and payrolls she and her team examined for the period January to May 1999, the Provincial Government of Sulu failed to pay the provincial government employees their salary differentials, ACA, PERA, and other benefits; that the Department of Budget and Management confirmed to the special audit team that funds were released to the Provincial Government of Sulu for January to May 1999 so there was no reason why the money was not released to the employees; and that the funds released came from the IRA of the provincial government for the 1999 budget. As regards the RATA, the Sandiganbayan held that their defense of payment was an affirmative allegation that required proof. Estino and Pescadera filed a MR and a Supplemental MR and Motion for New Trial (MNT) which were denied by the Sandiganbayan.

ISSUE:

Whether the Sandiganbayan erred in denying Estino and Pescadera's MR and MNT. (YES)

RULING:

Although the documents offered by Estino and Pescadera are strictly not newly discovered, they were mistaken in their belief that its production during trial was unnecessary. In their Supplemental MR/MNT, they stressed that they no longer presented the evidence of payment of RATA because Balabaran testified that the subject of the charge was the nonpayment of benefits under the 1999 budget, without mention of the RATA nor the 1998 reenacted budget. It seems that they were misled during trial. They were precluded from presenting pieces of evidence that may prove actual payment of the RATA under the 1998 reenacted budget because the prosecution's evidence was confined to alleged nonpayment of RATA under the 1999 budget.

The Court is inclined to give a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges. The situation is peculiar, since they were precluded from presenting exculpatory evidence during trial upon the honest belief that they were being tried for nonpayment of RATA under the 1999 budget. This belief was based on no less than the testimony of the prosecution's lone witness, COA Auditor Mona Balabaran. Even Associate Justice Palattao of the Sandiganbayan had to clarify from Balabaran which budget she was referring to. Balaraban, however, made it very clear that the unpaid benefits were those provided under the 1999 budget.

ROMMEL C. BRIONES, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 156009, SECOND DIVISION, June 5, 2009, BRION, *J.*

For a new trial to be granted on the ground of newly discovered evidence, the concurrence of the following conditions must obtain: (a) the evidence must have been discovered after trial; (b) the evidence could not have been discovered at the trial even with the exercise of reasonable diligence; (c)

the evidence is material, not merely cumulative, corroborative, or impeaching; and (d) the evidence must affect the merits of the case and produce a different result if admitted. In this case, although the firearm surfaced after the trial, the other conditions were not established.

FACTS:

S/G Molina is a security guard and was issued a firearm. He lost his firearm to Briones and subsequently reported the incident. The police arrested Briones after conducting an investigation. Briones denied any participation in the mauling and the grabbing of the firearm. The RTC found Briones guilty of simple theft. The CA found him guilty of robbery. Briones filed an Omnibus MR, a Motion for New Trial and a Motion to Dismiss.

ISSUE:

Whether a new trial is justified. (NO)

RULING:

Although the firearm surfaced after the trial, the other conditions were not established. Evidence, to be considered newly discovered, must be one that could not, by the exercise of due diligence, have been discovered before the trial in the court below. The determinative test is the presence of due or reasonable diligence to locate the thing to be used as evidence in the trial.

Briones failed to show that he had exerted reasonable diligence to locate the firearm; his allegation in his Omnibus Motion that he told his brothers and sisters to search for the firearm, which yielded negative results, is purely self-serving. He also now admits having taken the firearm and having immediately disposed of it at a nearby house, adjacent to the place of the incident. Hence, even before the case went to court, he already knew the location of the subject firearm, but did not do anything; he did not even declare this knowledge at the trial below. In any case, the recovery of the firearm cannot be considered material evidence that will affect the outcome of the case; the recovery of the subject firearm does not negate the commission of the crime charged. In petitions for new trial in a criminal proceeding where a certain evidence was not presented, the defendant, in order to secure a new trial, must satisfy the court that he has a good defense, and that the acquittal would in all probability follow the introduction of the omitted evidence. Briones' change of defense from denial and alibi to self-defense or in defense of a relative will not change the outcome for Briones considering that he failed to show unlawful aggression on the part of S/G Molina and/or S/G Gual – the essential element of these justifying circumstances under Article 11 of the Code.

EDGARDO V. ESTARIJA, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, represented by the SOLICITOR GENERAL, and EDWARD RANADA, *Respondents*.
G.R. No. 173990, THIRD DIVISION, October 27, 2009, CHICO-NAZARIO, *J.*

The right to appeal is not a natural right or a part of due process, but merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of the law. Under RA 8249, the decisions of the RTC convicting an accused who occupies a position lower than that with salary grade 27 or those not otherwise covered by the enumeration of certain public officers in Section 4 of PD 1606 as amended by RA 8249 are to be appealed exclusively to the Sandiganbayan. Having failed to comply with the requirements set forth in the rules, Estarija's appeal should have been dismissed by the CA.

FACTS:

Estarija, Harbor Master of the Philippine Ports Authority in Davao City, was charged with a violation of RA 3019 for allegedly receiving 5,000 in consideration for the issuance of berthing permits. He was convicted by the RTC. The CA affirmed the conviction but modified the penalty. Hence, his appeal, contending that he was not guilty. However, the SC resolved a different issue, as in a criminal proceeding, an appeal throws the whole case open for review.

ISSUE:

Whether the CA had appellate jurisdiction over the RTC decision convicting Estarija. (NO)

RULING:

Under RA 8249 or An Act further Defining the Jurisdiction of the Sandiganbayan, the decisions of the RTC - convicting an accused who occupies a position lower than that with salary grade 27 or those not otherwise covered by the enumeration of certain public officers in Section 4 of PD 1606 as amended by RA 8249 - are to be appealed exclusively to the Sandiganbayan. The party who seeks to appeal must comply with the requirements of the rules, otherwise the right to appeal is lost. Having failed to comply with the requirements set forth in the rules, Estarija's appeal should have been dismissed by the CA.

Instead of appealing his conviction to the Sandiganbayan, Estarija erroneously filed an appeal with the CA, in disregard of paragraph 3, Section 4(c) of RA 8249. The CA did not notice this conspicuous misstep, since it entertained the appeal. This flaw did not toll the running of the period for Estarija to perfect his appeal to the Sandiganbayan. Because of this, the Decision of the RTC convicting him has become final and executory.

JOHN HILARIO y SIBAL, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 161070, THIRD DIVISION, April 14, 2008, AUSTRIA-MARTINEZ, *J.*

An appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal. Hence, in this case, it is important to find out whether petitioner's loss of the right to appeal was due to the PAO lawyer's negligence and not at all attributed to petitioner.

FACTS:

The RTC found Hilario and his co-accused Alijid guilty of homicide. Hilario, unassisted by counsel, filed with the RTC a petition for relief from judgment. He contended that at the time of the promulgation of the judgment, he was already confined in jail and had no way of personally filing the notice of appeal; that he instructed his PAO lawyer to file the necessary MR or notice of appeal; that believing that the notice of appeal filed by his counsel prevented the RTC decision from becoming final, he instructed a representative to get a copy of the notice of appeal; that after such, he learned that no notice of appeal was filed by his PAO lawyer. The Assistant City Prosecutor opposed the petition and contended that perfection of an appeal within the period mandated is jurisdictional and the failure to perfect such appeal rendered the RTC judgment final and executory. The RTC dismissed the petition. Hilario filed a petition for certiorari with the CA, but the appellate court dismissed the petition. Hence, the appeal before the SC. Hilario contends that that the negligence of his counsel *de*

oficio cannot be binding on him for the latter's defiance of his instruction to appeal automatically breaks the fiduciary relationship between counsel-client and cannot be against the client who was prejudiced.

ISSUE:

Whether the RTC gravely abused its discretion in dismissing Hilario's petition for relief from judgment. (YES)

RULING:

Petitioner was represented in the RTC by Atty. Rivera of the PAO. PAO Memorandum Circular provides that all appeals must be made upon the request of the client himself and only meritorious cases shall be appealed; and that in criminal cases, the accused enjoys the constitutional presumption of innocence until the contrary is proven, hence cases of defendants in criminal actions are considered meritorious and therefore, should be appealed, upon the client's request. Petitioner claims he had instructed the PAO lawyer to file an appeal. Under the PAO Memorandum Circular, it was the duty of the latter to perfect the appeal. In determining whether the petition for relief from judgment is based on a meritorious ground, it was crucial to ascertain whether petitioner indeed gave explicit instruction to the PAO lawyer to file an appeal but the latter failed to do so. The RTC should have required the PAO lawyer to comment on the petition. However, it appears from the records that the RTC only required the City Prosecutor to file a comment on the petition. There was no basis for the RTC to conclude that the claim of petitioner that he instructed the PAO lawyer to file an appeal as self-serving and unsubstantiated.

An appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the opportunity for the proper disposition of his cause, freed from the constraints of technicalities. While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution. The importance of finding out whether petitioner's loss of the right to appeal was due to the PAO lawyer's negligence and not at all attributed to petitioner.

However, the Court cannot, in the present petition for review on *certiorari,* make a conclusive finding that indeed there was excusable negligence on the part of the PAO lawyer which prejudiced petitioner's right to appeal his conviction. To do so would be pure speculation or conjecture. Therefore, a remand of this case to the RTC for the proper determination of the merits of the petition for relief from judgment is just and proper.

PHILIPPINE RABBIT BUS LINES, INC., *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 147703, April 14, 2004, FIRST DIVISION, PANGANIBAN, J.

When the accused-employee absconds or jumps bail, the judgment meted out becomes final and executory. The employer cannot defeat the finality of the judgment by filing a notice of appeal on its own behalf in the guise of asking for a review of its subsidiary civil liability. Both the primary civil liability of the accused-employee and the subsidiary civil liability of the employer are carried in one single decision that has become final and executory.

FACTS:

Napoleon Roman Macadangdang was found guilty and convicted of the crime of reckless imprudence resulting to triple homicide, multiple physical injuries and damage to property and was sentenced to suffer the penalty of four years, nine months and eleven days to six years, and to pay damages.
The court further ruled that petitioner, in the event of the insolvency of accused, shall be liable for the civil liabilities of the accused. Evidently, the judgment against accused had become final and executory.

Accused jumped bail and remained at-large. Section 8, Rule 124 of the Rules of Court authorizes the dismissal of appeal when appellant jumps bail. Counsel for accused, also admittedly hired and provided by petitioner, filed a notice of appeal which was denied by the trial court. Such was denied. Petitioner filed its notice of appeal from the judgment of the trial court. The trial court gave due course to petitioner's notice of appeal.

The CA ruled that the institution of a criminal case implied the institution also of the civil action arising from the offense. Thus, once determined in the criminal case against the accused-employee, the employer's subsidiary civil liability as set forth in Article 103 of the Revised Penal Code becomes conclusive and enforceable. The appellate court further held that to allow an employer to dispute independently the civil liability fixed in the criminal case against the accused-employee would be to amend, nullify or defeat a final judgment. Since the notice of appeal filed by the accused had already been dismissed by the CA, then the judgment of conviction and the award of civil liability became final and executory. Included in the civil liability of the accused was the employer's subsidiary liability.

ISSUES:

Whether or not an employer, who dutifully participated in the defense of its accused-employee, may appeal the judgment of conviction independently of the accused.

RULING:

The argument has no merit. Undisputedly, petitioner is not a direct party to the criminal case, which was filed solely against Napoleon M. Roman, its employee.
The cases dealing with the subsidiary liability of employers uniformly declare that, strictly speaking, they are not parties to the criminal cases instituted against their employees. Although in substance and in effect, they have an interest therein, this fact should be viewed in the light of their subsidiary liability. While they may assist their employees to the extent of supplying the latter's lawyers, as in the present case, the former cannot act independently on their own behalf, but can only defend the accused.

As a matter of law, the subsidiary liability of petitioner now accrues. Petitioner argues that the rulings of this Court in Miranda v. Malate Garage & Taxicab, Inc.,41 Alvarez v. CA42 and Yusay v. Adil do not apply to the present case, because it has followed the Court's directive to the employers in these cases to take part in the criminal cases against their employees. By participating in the defense of its employee, herein petitioner tries to shield itself from the undisputed rulings laid down in these leading cases.

Such posturing is untenable. In dissecting these cases on subsidiary liability, petitioner lost track of the most basic tenet they have laid down -- that an employer's liability in a finding of guilt against its accused-employee is subsidiary.

Under Article 103 of the Revised Penal Code, employers are subsidiarily liable for the adjudicated civil liabilities of their employees in the event of the latter's insolvency. The provisions of the Revised Penal Code on subsidiary liability -- Articles 102 and 103 -- are deemed written into the judgments in the cases to which they are applicable. Thus, in the dispositive portion of its decision, the trial court need not expressly pronounce the subsidiary liability of the employer.

In the absence of any collusion between the accused-employee and the offended party, the judgment of conviction should bind the person who is subsidiarily liable. In effect and implication, the stigma of a criminal conviction surpasses mere civil liability.

To allow employers to dispute the civil liability fixed in a criminal case would enable them to amend, nullify or defeat a final judgment rendered by a competent court. By the same token, to allow them to appeal the final criminal conviction of their employees without the latter's consent would also result in improperly amending, nullifying or defeating the judgment.

The decision convicting an employee in a criminal case is binding and conclusive upon the employer not only with regard to the former's civil liability, but also with regard to its amount. The liability of an employer cannot be separated from that of the employee.

Before the employers' subsidiary liability is exacted, however, there must be adequate evidence establishing that (1) they are indeed the employers of the convicted employees; (2) that the former are engaged in some kind of industry; (3) that the crime was committed by the employees in the discharge of their duties; and (4) that the execution against the latter has not been satisfied due to insolvency.

The resolution of these issues need not be done in a separate civil action. But the determination must be based on the evidence that the offended party and the employer may fully and freely present. Such determination may be done in the same criminal action in which the employee's liability, criminal and civil, has been pronounced; and in a hearing set for that precise purpose, with due notice to the employer, as part of the proceedings for the execution of the judgment.

Just because the present petitioner participated in the defense of its accused-employee does not mean that its liability has transformed its nature; its liability remains subsidiary. Neither will its participation erase its subsidiary liability. The fact remains that since the accused-employee's conviction has attained finality, then the subsidiary liability of the employer ipso facto attaches.

According to the argument of petitioner, fairness dictates that while the finality of conviction could be the proper sanction to be imposed upon the accused for jumping bail, the same sanction should not affect it. In effect, petitioner-employer splits this case into two: first, for itself; and second, for its accused-employee.

The untenability of this argument is clearly evident. There is only one criminal case against the accused-employee. A finding of guilt has both criminal and civil aspects. It is the height of absurdity for this single case to be final as to the accused who jumped bail, but not as to an entity whose liability is dependent upon the conviction of the former.

The subsidiary liability of petitioner is incidental to and dependent on the pecuniary civil liability of the accused-employee. Since the civil liability of the latter has become final and enforceable by reason of his flight, then the former's subsidiary civil liability has also become immediately enforceable. Respondent is correct in arguing that the concept of subsidiary liability is highly contingent on the imposition of the primary civil liability.

HEIRS OF SARAH MARIE PALMA BURGOS, *Petitioners*, -versus-. COURT OF APPEALS and JOHNNY CO y YU, *Respondents*.
G.R. No. 169711, February 8, 2010, SECOND DIVISION, ABAD, J.

The Court is firmly convinced that considering the spirit and the letter of the law, there can be no other logical interpretation of Sec. 35 of the Administrative Code than that it is, indeed, mandatory upon the OSG to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.
For the above reason, actions essentially involving the interest of the state, if not initiated by the Solicitor General, are, as a rule, summarily dismissed.

FACTS:

On January 7, 1992 a number of assailants attacked the household of Sarah Marie Palma Burgos while all were asleep, killing Sarah and her uncle Erasmo Palma. Another uncle, Victor Palma, and a friend, Benigno Oquendo survived the attack. The theory of the police was that a land transaction gone sour between Sarah's live-in partner, David So and respondent Johnny Co motivated the assault.
Four months after the incident, the police arrested Cresencio Aman and Romeo Martin who executed confessions, allegedly admitting their part in the attack. They pointed to two others who helped them, namely, Artemio "Pong" Bergonia and Danilo Say, and to respondent Co who allegedly masterminded the whole thing.

The RTC Manila tried the case against Aman and and acquitted them. The three others remained at large. After 10 years, respondent Co surrendered to the National Bureau of Investigation. The prosecution charged him with two counts of murder for the deaths of Sarah and Erasmo and two counts of frustrated murder committed against Oquendo and Victor. Upon arraignment, Co pleaded not guilty to the charges.

Co filed a petition for admission to bail, which was granted on the ground that the evidence of guilt of respondent Co was not strong.

Petitioner heirs of Sarah moved for reconsideration but the RTC, now presided over by another judge, denied the same. This prompted the victim's heirs to file a special civil action of certiorari with prayer for a temporary restraining order or preliminary injunction before the Court of Appeals.

The CA dismissed the petition, however, for having been filed without involving the Office of the Solicitor General, in violation of jurisprudence and the law, specifically, Section 35, Chapter 12, Title III, Book IV of the Administrative Code which states that the Office of the Solicitor General shall represent the Government of the Philippines.

Petitioner heirs of Sarah moved for reconsideration but the CA denied it for lack of merit.

ISSUE:

Whether or not the CA correctly dismissed the special civil action of certiorari, which questioned the RTC's grant of bail to respondent Co, for having been filed in the name of the offended parties and without the OSG's intervention.

RULING:

Yes. The purpose of a criminal action, in its purest sense, is to determine the penal liability of the accused for having outraged the state with his crime and, if he be found guilty, to punish him for it. In this sense, the parties to the action are the People of the Philippines and the accused. The offended party is regarded merely as a witness for the state. Also in this wise, only the state, through its appellate counsel, the OSG, has the sole right and authority to institute proceedings before the CA or the Supreme Court.

The Court is firmly convinced that considering the spirit and the letter of the law, there can be no other logical interpretation of Sec. 35 of the Administrative Code than that it is, indeed, mandatory upon the OSG to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.

For the above reason, actions essentially involving the interest of the state, if not initiated by the Solicitor General, are, as a rule, summarily dismissed.
Here, the question of granting bail to the accused is but an aspect of the criminal action, preventing him from eluding punishment in the event of conviction. The grant of bail or its denial has no impact on the civil liability of the accused that depends on conviction by final judgment. Here, respondent Co has already been arraigned. Trial and judgment, with award for civil liability when warranted, could proceed even in his absence.

In Narciso v. Sta. Romana-Cruz, this Court allowed the offended party to challenge before it the trial court's order granting bail. But in that case, the trial court gravely abused its discretion amounting to lack of jurisdiction in granting bail without conducting any hearing at all. Thus, to disallow the appeal on the basis of lack of intervention of the OSG would "leave the private complainant without any recourse to rectify the public injustice." It is not the case here. The trial court took time to hear the parade of witnesses that the prosecution presented before reaching the conclusion that the evidence of guilt of respondent Co was not strong.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus- VAL DE LOS REYES and DONELGO, *Accused-Appellants*.
G.R. Nos. 130714 & 139634, October 16, 201, EN BANC, Perlas-Bernabe, J.

The Court no longer sees the necessity of transferring these cases to the CA for intermediate review and instead, deems it more appropriate to dismiss the instant appeal.

Records reveal that the appellant jumped bail during the proceedings before the RTC and was, in fact, tried and convicted in absentia. There is dearth of evidence showing that he has since surrendered to the court's jurisdiction. Thus, he has no right to pray for affirmative relief before the courts. Once an accused escapes from prison or confinement, jumps bail as in appellant's case, or flees to a foreign

country, he loses his standing in court, and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief therefrom.

FACTS:

On December 22, 1994, complainant Imelda B. Brutas, upon the request of her sister Clara, went to the house of appellant at San Roque, Tabaco, Albay to bring some pictures. Upon arrival thereat, Imelda saw appellant by the road outside his house talking to another man, whom appellant introduced to her as Val De Los Reyes. However, because it suddenly rained, the three of them took shelter inside appellant's house, where appellant and Val forced Imelda to drink two bottles of beer, causing her to feel dizzy. It was under this condition that Val succeeded in having sexual intercourse with her against her will. Thereafter, appellant took his turn with Imelda, aided by Val who covered her mouth and held her hands.

Apparently not satisfied, Val once again ravished Imelda, with the assistance of appellant who likewise covered her mouth and held her hands.

Thus, Imelda filed criminal complaints for rape against appellant and Val, who were jointly charged in two Informations.

Unfortunately, the authorities were able to arrest only appellant while Val remained at large. Thus, appellant was arraigned and pleaded not guilty to the crime charged, but before the prosecution could conclude the presentation of its evidence, he jumped bail. Consequently, he was tried in absentia.

The RTC convicted appellant of two counts of rape and sentenced him to suffer the death penalty for each count and to pay moral damages and attorney's fees. In view of the penalty of death imposed upon him, the case was elevated to the Court on automatic review. Meanwhile, the cases against Val were sent to the archives pending his arrest.

In 1997, the RTC revived the criminal cases against Val, who, after trial, was likewise found guilty beyond reasonable doubt of the three charges of rape filed against him. Through counsel, Val appealed his conviction before the Court.

The Court ordered the consolidation of the five cases.

In 2007, the Court En Banc rendered a Decision vacating the judgment of conviction against Val, upon a finding that the RTC violated Sections 1 and 2, Rule 132 and Section 1, Rule 133 of the then Revised Rules of Court which required that the testimonies of the witnesses be given orally. Thus, finding that the proceedings against Val were abbreviated and irregular, the Court remanded the cases for rehearing. Meanwhile, the automatic review of the cases against appellant was held in abeyance.

Val was tried anew before the RTC, which, in its Joint Decision eventually convicted him for three counts of rape and sentenced him to suffer the death penalty as well as to pay private complainant ₱ 50,000.00 as damages for each count. He appealed his conviction to the Court of Appeals, which affirmed his conviction, with the modification reducing the penalty of death to reclusion perpetua for each count, and ordering the payment of the amount of ₱ 50,000.00 by way of moral damages to the victim.

Val's motion for reconsideration was likewise denied, hence, his separate appeal before the Court, docketed as G.R. No. 177357, pending before the Court's Third Division. With the foregoing factual backdrop, only appellant's appeal is left before the Court En Banc for resolution.

ISSUE:

Whether there is a necessity of transferring these cases to the CA for immediate review.

RULING:

At the outset, the Court notes that these cases were elevated to Us on automatic review in view of the RTC's imposition of the death penalty upon appellant in its June 25, 1997 Decision. However, with the Court's pronouncement in the 2004 case of People v. Mateo providing for and making mandatory the intermediate review by the CA of cases involving the death penalty, reclusion perpetua or life imprisonment, the proper course of action would be to remand these cases to the appellate court for the conduct of an intermediate review.

The Court no longer sees the necessity of transferring these cases to the CA for intermediate review and instead, deems it more appropriate to dismiss the instant appeal.

Records reveal that the appellant jumped bail during the proceedings before the RTC and was, in fact, tried and convicted in absentia. There is dearth of evidence showing that he has since surrendered to the court's jurisdiction. Thus, he has no right to pray for affirmative relief before the courts. Once an accused escapes from prison or confinement, jumps bail as in appellant's case, or flees to a foreign country, he loses his standing in court, and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief therefrom.

Thus, even if the Court were to remand these cases to the CA for intermediate review, the CA would only be constrained to dismiss appellant's appeal, as he is considered a fugitive from justice. On this score, Section 8, Rule 124 of the Rules of Court is relevant, which provides:

SEC. 8. Dismissal of appeal for abandonment or failure to prosecute. – The Court of Appeals may, upon motion of the appellee or motu proprio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel de officio.
The Court of Appeals may also, upon motion of the appellee or motu proprio, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.

It bears to stress that the right to appeal is merely a statutory privilege, and, as such, may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules, failing which, the right to appeal is lost.

CESAR P. GUY, *Petitioner*, -versus- THE PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. Nos. 166794-96, March 20, 2009, SECOND DIVISION, TINGA, J.

In the case at bar, all the elements of violation of Sec. 3(e) R.A. No. 3019 are indicated in the Informations. The Informations allege that while in the performance of their respective functions either as city or barangay officials, petitioners caused the construction of the subject structures, either without

following the approved program of work and drawing plan, or worse, even without any plans and specifications; and furthermore, had given unwarranted benefits to themselves and to Edgar Amago, to the damage and prejudice of the government.

Contrary also to petitioners' assertions, the specific acts of the accused do not have to be described in detail in the information, as it is enough that the offense be described with sufficient particularity to make sure the accused fully understand what he is being charged with. The particularity must be such that a person of ordinary intelligence immediately knows what the charge is.

FACTS:

Petitioners were charged in three separate Informations with violation of Section 3 (e) of R. A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in connection with the construction of three infrastructure projects in Barangay 36, namely: an elevated path walk, a basketball court and a day care center.

The Ombudsman Prosecutor filed the corresponding information for the offenses, essentially charging petitioners with violation of Section 3(e) of R.A. No. 3019.
The Sandiganbayan decided the case against petitioners.

Petitioners filed their separate motions for reconsideration of the decision, which were denied.

In essence, petitioners maintain that the Sandiganbayan had not acquired jurisdiction over them because the three informations failed to state the specific actual allegations that would indicate the connection between the discharge of their official duties and the commission of the offenses charged; or alternatively, assuming that the Sandiganbayan had actually acquired jurisdiction, the prosecution failed to prove the guilt of the accused beyond reasonable doubt, as well as the existence of conspiracy.

The People of the Philippines, represented by the Office of the Ombudsman, argues that the averments in the Informations are "complete and wanting of the slightest vagueness as to denote another interpretation or mislead anyone." 19 Section 6, Rule 110 of the Revised Rules of Court merely require the information to describe the offense with sufficient particularity as to apprise the accused of what they are being charged with and to enable the court to pronounce judgment, such that evidentiary matters need not be alleged in the information. The OMB adds that if it were true that the allegations are vague or indefinite, petitioners should have filed a motion for a bill of particulars as provided under Section 9, Rule 116 of the Rules of Court to question the alleged insufficiency of the informations, or a motion to quash on the ground that the facts averred do not constitute an offense.

The OMB asserts that the prosecution had satisfactorily proven the existence of the elements of the offense under Section 3(e) of R.A. No. 3019, as well as the existence of conspiracy among the accused.

ISSUE:

Whether or not the elements of the offense are properly described in the information.

RULING:

Yes. To hold a person liable under this R.A. 3019, the concurrence of the following elements must be established, viz:

(1) that the accused is a public officer or a private person charged in conspiracy with the former;
(2) that said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;
(3) that he or she causes undue injury to any party, whether the government or a private party; and
(4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence."

The Court finds that the Informations sufficiently show the close intimacy between petitioners' discharge of official duties and the commission of the offense charged.

In the case at bar, all the elements of violation of Sec. 3(e) R.A. No. 3019 are indicated in the Informations. The Informations allege that while in the performance of their respective functions either as city or barangay officials, petitioners caused the construction of the subject structures, either without following the approved program of work and drawing plan, or worse, even without any plans and specifications; and furthermore, had given unwarranted benefits to themselves and to Edgar Amago, to the damage and prejudice of the government.

Contrary also to petitioners' assertions, the specific acts of the accused do not have to be described in detail in the information, as it is enough that the offense be described with sufficient particularity to make sure the accused fully understand what he is being charged with. The particularity must be such that a person of ordinary intelligence immediately knows what the charge is. Moreover, reasonable certainty in the statement of the crime suffices. It is often difficult to say what is a matter of evidence, as distinguished from facts necessary to be stated in order to render the information sufficiently certain to identify the offense. As a general rule, matters of evidence, as distinguished from facts essential to the description of the offense, need not be averred. The particular acts of the accused which pertain to "matters of evidence," such as how accused city officials prepared the inspection reports despite the absence of a project plan or how the contractor was able to use substandard materials, do not have to be indicated in the information.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, -versus-. MICHAEL LINDO y VERGARA, *Accused-Appellant*.

G.R. No. 189818, August 9, 2010, FIRST DIVISION, VELASCO, JR., J.:

Both the RTC and the CA, however, erred in finding only one count of rape in the present case. It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not. From the information filed, it is clear that accused-appellant was charged with two offenses, rape under Art. 266-A, par. 1 (d) of the Revised Penal Code, and rape as an act of sexual assault under Art. 266-A, par. 2.

Section 3, Rule 120 of the Revised Rules of Criminal Procedure states, "When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." As accused-appellant failed to file a motion to quash the Information he can be convicted of two counts of rape.

FACTS:

AAA, the private complainant, born on May 6, 1989, was 11 years old at the time, residing in San Andres Bukid, Malate, Manila, and accused-appellant Lindo was her neighbor.

On April 3, 2001, AAA attended a pabasa at a neighbor's place, during which she fell asleep under a platform that served as a stage. While AAA was sleeping, Lindo took her away to a place near a creek where clothes are placed to dry. It was there that AAA woke up, as Lindo removed her short pants and underwear, and also undressed himself. He tried inserting his penis into her vagina, whereupon his penis made contact with her sex organ but there was no complete penetration. Not achieving full penile penetration, he then made her bend over, and inserted his penis into her anus, causing her to cry out in pain. Lindo then sensed the arrival of a friend of AAA, so he discontinued his act, and told AAA to put on her clothes and go home. These AAA did, and related the incident to her parents, who reported it to the barangay authorities. Lindo was arrested the same day.

AAA was examined by Dr. Evelyn B. Ignacio, National Bureau of Investigation Medico-Legal Officer, on the same day, and was found to have extragenital physical injuries as well as abrasions on her anal orifice. Dr. Ignacio theorized that the anal injuries could have been caused by the insertion of a blunt object, such as a penis, finger or pencil.

Lindo raised the defenses of denial and alibi, claiming that as a painter working in Ayala, Makati, his usual work schedule was from 8:00 a.m. to 6:00 p.m. He claimed that on April 3, 2001, he reported for work at 8:00 p.m. until 5:00 a.m., and that when he came home from work at 6:00 a.m., he was arrested by a barangay official and was brought to the police precinct, where he was investigated for rape.

Lindo was charged in an Information dated April 6, 2001.

The RTC found the testimony of AAA to be more credible, and rendered its decision, the dispositive portion of which reads as follows:

Lindo appealed to the CA, assailing the credibility of AAA.

Lindo failed to persuade the CA, which affirmed his conviction, but modified the award of damages to AAA. The CA found the award of civil indemnity proper, in line with prevailing jurisprudence.

Exemplary damages were also found to be proper, for the purpose of being a deterrent to crime.

Now before this Court, accused-appellant Lindo reiterates his defense presented before the RTC and the CA, questioning the weight given to AAA's testimony and its credibility.

ISSUE:

Whether or not the conviction is proper.

RULING:

The conviction of accused-appellant Lindo must be affirmed.

It has been proved beyond reasonable doubt that accused-appellant Lindo had carnal knowledge of AAA. The insertion of his penis into the vagina of AAA, though incomplete, was sufficient. As held in People v. Tablang, the mere introduction of the male organ in the labia majora of the victim's genitalia consummates the crime; the mere touching of the labia by the penis was held to be sufficient. The elements of the crime of rape under Art. 266-A of the Revised Penal Code are present. Under the said article, it provides that rape is committed by a man who shall have carnal knowledge of a woman when the offended party is under twelve years of age. AAA was 11 years old at the time accused-appellant had carnal knowledge of her. As such, that constitutes statutory rape. The two elements of the crime are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age.16 Thus, the CA correctly upheld the conviction of accused-appellant by the RTC.

Both the RTC and the CA, however, erred in finding only one count of rape in the present case. It is settled that in a criminal case, an appeal throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether they are made the subject of the assignment of errors or not. From the information filed, it is clear that accused-appellant was charged with two offenses, rape under Art. 266-A, par. 1 (d) of the Revised Penal Code, and rape as an act of sexual assault under Art. 266-A, par. 2. Accused-appellant was charged with having carnal knowledge of AAA, who was under twelve years of age at the time, under par. 1(d) of Art. 266-A, and he was also charged with committing "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" under the second paragraph of Art. 266-A. Two instances of rape were indeed proved at the trial, as it was established that there was contact between accused-appellant's penis and AAA's labia; then AAA's testimony established that accused-appellant was able to partially insert his penis into her anal orifice. The medical examination also supports the finding of rape under Art. 266-A par. 1(d) and Art. 266-A par. 2, considering the extragenital injuries and abrasions in the anal region reported.

The information, read as a whole, has sufficiently informed accused-appellant that he is being charged with two counts of rape, as it relates his act of inserting his penis into AAA's anal orifice, as well as his trying to insert his penis into her vagina.

Two offenses were charged, a violation of Section 13, Rule 110 of the Revised Rules of Criminal Procedure, which states, "A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Section 3, Rule 120 of the Revised Rules of Criminal Procedure states, "When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." As accused-appellant failed to file a motion to quash the Information he can be convicted of two counts of rape.

Accused-appellant was found guilty of two counts of rape, rape under Art. 266-A, par. 1(d) and rape through sexual assault, under Art. 266-A, par. 2. The decision of the CA must therefore be modified. Accused-appellant would then be sentenced for one count of rape and another count for rape through sexual assault. For rape under Art. 266-A, par. 1(d), the imposable penalty is reclusion perpetua. For rape through sexual assault under Art. 266-A, par. 2, the imposable penalty is prision mayor; and applying the Indeterminate Sentence Law, accused-appellant would be sentenced to an indeterminate penalty of two years, four months and one day of prision correccional as minimum, to eight years and one day of prision mayor as maximum.

ARNOLD JAMES M. YSIDORO, *Petitioner*, -versus- HON. TERESITA J. LEONARDO-DE CASTRO, HON. DIOSDADO M. PERALTA and HON. EFREN N. DE LA CRUZ, in their official capacities as Presiding Justice and Associate Justices, respectively, of the First Division of the Sandiganbayan, and NIERNA S. DOLLER, *Respondents.*
G.R. No. 171513, February 6, 2012, SECOND DIVISION, BRION, J:

As applied to judgments rendered in criminal cases, unlike a review via a Rule 65 petition, only judgments of conviction can be reviewed in an ordinary appeal or a Rule 45 petition. The constitutional right of the accused against double jeopardy proscribes appeals of judgments of acquittal through the remedies of ordinary appeal and a Rule 45 petition.
However, the rule against double jeopardy cannot be properly invoked in a Rule 65 petition, predicated on two (2) exceptional grounds, namely: in a judgment of acquittal rendered with grave abuse of discretion by the court; and where the prosecution had been deprived of due process.

Applying these legal concepts to this case, we find that while the People was procedurally correct in filing its petition for certiorari under Rule 65, the petition does not raise any jurisdictional error committed by the Sandiganbayan. On the contrary, what is clear is the obvious attempt by the People to have the evidence in the case reviewed by the Court under the guise of a Rule 65 petition. This much can be deduced by examining the petition itself which does not allege any bias, partiality or bad faith committed by the Sandiganbayan in its proceedings. The petition does not also raise any denial of the People's due process in the proceedings before the Sandiganbayan.

FACTS:

Ysidoro, as Municipal Mayor of Leyte, Leyte, was charged before the Sandiganbayan with willfully, unlawfully and criminally, withholding and failing to give to Nierna S. Doller, Municipal Social Welfare and Development Officer of Leyte, Leyte, without any legal basis, her RATA for the months of August, September, October, November and December, all in the year 2001, in the total amount of P22,125.00, and for the year 2000, in the amount of P2,000.00; and that despite demands made upon accused to release and pay her the amount of ₱22,125.00 and ₱2,000.00, accused failed to do so, thus accused in the course of the performance of his official functions had deprived the complainant of her RATA and Productivity Pay, to the damage and injury of Nierna S. Doller and detriment of public service.

Ysidoro filed an omnibus motion to quash the information and, in the alternative, for judicial determination of probable cause, which were both denied by the Sandiganbayan. In due course, Ysidoro was arraigned and he pleaded not guilty.

On motion of the prosecution, the Sandiganbayan preventively suspended Ysidoro for ninety (90) days in accordance with Section 13 of R.A. No. 3019.

Ysidoro filed a motion for reconsideration and questioned the necessity and the duration of the preventive suspension. However, the Sandiganbayan denied the motion for reconsideration.

Ysidoro assailed the validity of these Sandiganbayan rulings in his petition before the Court. Meanwhile, trial on the merits in the principal case continued before the Sandiganbayan. The prosecution and the defense presented their respective evidence.

The prosecution presented Nierna S. Doller as its sole witness. According to Doller, she is the Municipal Social Welfare Development Officer of Leyte. She claimed that Ysidoro ordered her name to be deleted in the payroll because her husband transferred his political affiliation and sided with Ysidoro's opponent. After her name was deleted from the payroll, Doller did not receive her representation and transportation allowance (RATA) for the period of August 2001 to December 2001. Doller also related that she failed to receive her productivity bonus for the year 2000 (notwithstanding her performance rating of "VS") because Ysidoro failed to sign her Performance Evaluation Report. Doller asserted that she made several attempts to claim her RATA and productivity bonus, and made representations with Ysidoro, but he did not act on her requests. Doller related that her family failed to meet their financial obligations as a result of Ysidoro's actions.
To corroborate Doller's testimony, the prosecution presented documentary evidence in the form of disbursement vouchers, request for obligation of allotment, letters, excerpts from the police blotter, memorandum, telegram, certification, order, resolution, and the decision of the Office of the Deputy Ombudsman absolving her of the charges.

On the other hand, the defense presented seven (7) witnesses, including Ysidoro, and documentary evidence. The defense showed that the withholding of Doller's RATA was due to the investigation conducted by the Office of the Mayor on the anomalies allegedly committed by Doller. For this reason, Ysidoro ordered the padlocking of Doller's office, and ordered Doller and her staff to hold office at the Office of the Mayor for the close monitoring and evaluation of their functions. Doller was also prohibited from outside travel without Ysidoro's approval.

The Sandiganbayan acquitted Ysidoro and held that the second element of the offense – that there be malice, ill-motive or bad faith – was not present. Sandiganbayan denied the prosecution's motion for reconsideration.

Supervening events occurred after the filing of Ysidoro's petition which rendered the issue in G.R. No. 171513 — i.e., the propriety of his preventive suspension — moot and academic. First, Ysidoro is no longer the incumbent Municipal Mayor of Leyte, Leyte as his term of office expired in 2007. Second, the prosecution completed its presentation of evidence and had rested its case before the Sandiganbayan. And third, the Sandiganbayan issued its decision acquitting Ysidoro of the crime charged.

In light of these events, what is left to resolve is the petition for certiorari filed by the People on the validity of the judgment acquitting Ysidoro of the criminal charge.

ISSUE:

Whether or not the People's petition should be given due course.

RULING:

No. We dismiss the petitions for being procedurally and substantially infirm.

Generally, the Rules provides three (3) procedural remedies in order for a party to appeal a decision of a trial court in a criminal case before this Court. The first is by ordinary appeal under Section 3, Rule 122 of the 2000 Revised Rules on Criminal Procedure. The second is by a petition for review on certiorari under Rule 45 of the Rules. And the third is by filing a special civil action for certiorari under Rule 65. Each procedural remedy is unique and provides for a different mode of review. In

addition, each procedural remedy may only be availed of depending on the nature of the judgment sought to be reviewed.

As applied to judgments rendered in criminal cases, unlike a review via a Rule 65 petition, only judgments of conviction can be reviewed in an ordinary appeal or a Rule 45 petition. As we explained in People v. Nazareno, the constitutional right of the accused against double jeopardy proscribes appeals of judgments of acquittal through the remedies of ordinary appeal and a Rule 45 petition, thus:

The Constitution has expressly adopted the double jeopardy policy and thus bars multiple criminal trials, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous final judgment. Further prosecution via an appeal from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling. The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes via an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience.

However, the rule against double jeopardy cannot be properly invoked in a Rule 65 petition, predicated on two (2) exceptional grounds, namely: in a judgment of acquittal rendered with grave abuse of discretion by the court; and where the prosecution had been deprived of due process. The rule against double jeopardy does not apply in these instances because a Rule 65 petition does not involve a review of facts and law on the merits in the manner done in an appeal. In certiorari proceedings, judicial review does not examine and assess the evidence of the parties nor weigh the probative value of the evidence. It does not include an inquiry on the correctness of the evaluation of the evidence. A review under Rule 65 only asks the question of whether there has been a validly rendered decision, not the question of whether the decision is legally correct. In other words, the focus of the review is to determine whether the judgment is per se void on jurisdictional grounds.

Applying these legal concepts to this case, we find that while the People was procedurally correct in filing its petition for certiorari under Rule 65, the petition does not raise any jurisdictional error committed by the Sandiganbayan. On the contrary, what is clear is the obvious attempt by the People to have the evidence in the case reviewed by the Court under the guise of a Rule 65 petition. This much can be deduced by examining the petition itself which does not allege any bias, partiality or bad faith committed by the Sandiganbayan in its proceedings. The petition does not also raise any denial of the People's due process in the proceedings before the Sandiganbayan.

We observe, too, that the grounds relied in the petition relate to factual errors of judgment which are more appropriate in an ordinary appeal rather than in a Rule 65 petition. The grounds cited in the petition call for the Court's own appreciation of the factual findings of the Sandiganbayan on the sufficiency of the People's evidence in proving the element of bad faith, and the sufficiency of the evidence denying productivity bonus to Doller.

PEOPLE OF THE PHILIPPINES, *Appellee,* -versus- DAMASO GANDIA y CASTRO, JERRY RAMIREZ y RECIO, RENATO OLLERES y RIVERA, DANTE GANDIA y SANTOS, JOEL GONZALES y TODIO and ERNESTO CALARIPIO y MORALES*, Appellants.*
G.R. No. 175332, February 6, 2008 SECOND DIVISION, CARPIO MORALES, J.

The appellate court, however, to have erred in ordering Damaso, Ramirez and Dante who had, it bears repeating, withdrawn their appeal, to pay the heirs of the victim, jointly and severally, along with the two remaining appellants Olleres and Gonzales P25,000 in exemplary damages.

The trial court's decision in so far as Damaso, Ramirez and Dante are concerned had before become final and executory after they withdrew their appeal. Separate entries of judgment with respect to them had in fact been made. The appellate court is bereft of the power to modify the trial court's judgment as to them. Even if the trial court erred in not awarding exemplary damages in the first place in light of the established presence of an aggravating circumstance, the award thereof by the appellate court cannot affect Damaso, Ramirez and Dante as, in effect, they did not appeal and it is not favorable to them.

FACTS:

In 1993, while Louie Albuero and his companions including Francisco Serrano were at a drinking spree at the Ruby Disco Pub located in Laguna, Francisco pressed for the service to them of more beer, but as the pub was about to close, it was denied. A club bouncer thereupon approached Francisco and pub owner Damaso. Pedro Serrano, sensing trouble, intervened to calm down the parties.
The victim and company thereupon settled their bill and left in the course of which empty bottles were thrown at them. Irritated, Francisco and the victim returned at which Damaso, who was standing at the main door of the pub, tried to play down the incident. The victim boxed Damaso, however, drawing Pedro to restrain Damaso and apologize for what the victim did. Not mollified, Damaso instructed his men to run after the victim as he himself took his gun at the upper floor of the pub and thereafter fired it.

The victim, Francisco and Elpidio Serrano immediately fled but Damaso and his men chased them. Damaso and his men caught up with the victim who stumbled down. As the victim lay in a prone position, Gonzales, Dante, Ramirez and Olleres stabbed him several times as Calaripio and Bagolbagol watched.

The victim was pronounced dead on arrival at the General Cailles Memorial Hospital due to "hemorrhage, severe, secondary to stab wound-chest and abdomen." The Necropsy Report showed that he obtained nine stab wounds and abrasions in different parts of his body.

Gonzales and Calaripio were arrested not long after the incident. Bagolbagol surrendered to the police the following day or on June 29, 1993. Damaso went to Bicol but surrendered a year after or on June 28, 1994. Dante went to Cardona, Rizal, Olleres to San Pablo City, and Ramirez to Pasig City where they were respectively arrested.

All of the accused invoked alibi.

The trial court convicted all the accused and disposed as follows:

Damaso, Dante and Ramirez, who had filed a Notice of Appeal, subsequently filed separate motions to withdraw appeal which this Court granted.

Pursuant to People v. Mateo, this Court, by Resolution of September 15, 2004, referred the case with respect to appellants Olleres, Gonzales and Calaripio to the Court of Appeals.

Appellants faulted the trial court in finding them guilty beyond reasonable doubt. In any event, they posited that they should only be held liable for homicide as the aggravating circumstance of treachery was not alleged with specificity so as to qualify the killing to murder, pursuant to Sections 8 and 9 of the Revised Rules on Criminal Procedure that took effect on December 31, 2000.

The appellate court affirmed the conviction of the accused-appellants including Damaso, Dante and Ramirez who had withdrawn their respective appeals. It modified the trial court's decision, however, by acquitting Calaripio and imposing exemplary damages to the five accused.

With Calaripio's acquittal, Partial Entry of Judgment relative to his appeal was entered on March 16, 200622 and Order of Release was issued by the appellate court on March 17, 2006.

In view of the Notice of Appeal from the appellate court's decision filed by the remaining appellants Olleres and Gonzales, the records of this case were forwarded to this Court.

ISSUE:

Whether or not the CA correctly upheld the conviction.

RULING:

Yes. The appellate court, however, to have erred in ordering Damaso, Ramirez and Dante who had, it bears repeating, withdrawn their appeal, to pay the heirs of the victim, jointly and severally, along with the two remaining appellants Olleres and Gonzales P25,000 in exemplary damages.

The trial court's decision in so far as Damaso, Ramirez and Dante are concerned had before become final and executory after they withdrew their appeal. Separate entries of judgment with respect to them had in fact been made. As such, the appellate court is bereft of the power to modify the trial court's judgment as to them. Even if the trial court erred in not awarding exemplary damages in the first place in light of the established presence of an aggravating circumstance, the award thereof by the appellate court cannot affect Damaso, Ramirez and Dante as, in effect, they did not appeal and it is not favorable to them.

So Section 11, Rule 122 of the Rules of Court directs:

SEC. 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.

ERNESTO GARCES, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.

G.R. No. 173858, July 17, 2007, THIRD DIVISION, YNARES-SANTIAGO, J.:

It is a settled rule that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not. Such an appeal confers upon the appellate court full jurisdiction and renders it competent to examine the records, revise the judgment appealed from, increase the penalty and cite the proper provision of the penal law.

Having known of the criminal design and thereafter acting as a lookout, petitioner is liable as an accomplice, there being insufficient evidence to prove conspiracy, and not merely as an accessory.

This additional award should not apply to Pacursa who has withdrawn his appeal as the same is not favorable to him. Hence, the additional monetary award can only be imposed upon petitioner who pursued the present appeal.

FACTS:

In an Information dated December 10, 1992, Rosendo Pacursa, Senando Garces, Antonio Pira, Jr., Aurelio Pira, and petitioner Ernesto Garces, were charged with Forcible Abduction with Rape committed as follows: that Pacursa, after covering the victim's mouth, forcibly abducted, pulled and took away one AAA while walking to the church to the tobacco flue-curing barn and while inside the barn lie and succeeded in having sexual intercourse and carnal knowledge of the offended party; that accused Ernesto Garces later on covered the mouth of AAA and take her out of the barn; that accused Senando Garces, Antonio Pira, Jr. and Aurelio Pira stand guard outside the barn while Rosendo Pacursa is raping AAA; to the damage and prejudice of the offended party.

On August 2, 1992, between 8:00 and 9:00 o'clock in the evening, AAA was on her way to the chapel when the five accused suddenly appeared and approached her. Rosendo Pacursa covered her mouth with his hands and told her not to shout or she will be killed. He then brought her inside a nearby tobacco barn while his four companions stood guard outside.

Inside the barn, Pacursa started kissing AAA. Private complainant fought back but to no avail. Thereafter, Pacursa succeeded in having carnal knowledge of her. After a while, they heard people shouting and calling the name of AAA. At this point, petitioner Ernesto Garces entered the barn, covered AAA's mouth, then dragged her outside. He also threatened to kill her if she reports the incident.

Upon reaching the house of Florentino Garces, petitioner released AAA. Shortly afterwards, AAA's relatives found her crying, wearing only one slipper and her hair was disheveled. They brought her home but when asked what happened, AAA could not answer because she was in a state of shock. After a while, she was able to recount the incident.

Rosendo Pacursa denied that he raped the victim and asserted the sweetheart theory, while his co-accused presented alibis as their defense.

After trial on the merits, the trial court rendered its decision finding Pacursa guilty of Forcible Abduction with Rape while petitioner Garces was found guilty as an accessory to the crime. Antonio Pira, Jr. and Aurelio Pira were acquitted for insufficiency of evidence.

Both Pacursa and petitioner appealed the decision with the Court of Appeals. However, Pacursa subsequently withdrew his appeal.

The Court of Appeals rendered its Decision affirming with modification the decision of the trial court affirming the decision convicting accused Pacursaas principal and accused-appellant Garces as accessory of the crime of forcible abduction with rape. However, accused-appellant Ernesto Garces' sentence is modified in that he is to suffer the indeterminate penalty of imprisonment ranging from 4 years of prision correccional, as minimum, to 8 years and 1 day of prision mayor, as maximum.

Petitioner filed a motion for reconsideration but same was denied. Hence, the instant petition for review on certiorari.

ISSUE:

Whether or not the CA's modification of the judgment is proper.

RULING:

It has been established that Pacursa forcibly took AAA against her will and by use of force and intimidation, had carnal knowledge of her. The trial court found complainant's testimony to be credible, consistent and unwavering even during cross-examination.
We do not agree, however, that petitioner should be convicted as an accessory to the crime.

It is a settled rule that an appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of the Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not. Such an appeal confers upon the appellate court full jurisdiction and renders it competent to examine the records, revise the judgment appealed from, increase the penalty and cite the proper provision of the penal law.

Having known of the criminal design and thereafter acting as a lookout, petitioner is liable as an accomplice, there being insufficient evidence to prove conspiracy, and not merely as an accessory. As defined in the Revised Penal Code, accomplices are those who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts. The two elements necessary to hold petitioner liable as an accomplice are present: (1) community of criminal design, that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; and (2) performance of previous or simultaneous acts that are not indispensable to the commission of the crime.

In determining the civil liability of petitioner, a clarification of the trial court's decision is necessary. The dispositive portion of the trial court's decision held Pacursa and petitioner "jointly and solidarily liable to pay the victim the amount of ₱50,000.00 as and by way of actual and moral damages plus the cost of suit." For our purposes, we shall treat the amount of ₱50,000.00 awarded by the trial court as the civil indemnity ex delicto for which, as an accomplice, petitioner should be solidarily liable with Pacursa only for one-half of the said amount, or ₱25,000.00, and is subsidiarily liable for the other ₱25,000.00 in case the principal is found insolvent.

In addition, complainant must be awarded another ₱50,000.00 as moral damages. However, this additional award should not apply to Pacursa who has withdrawn his appeal as the same is not

favorable to him. Hence, the additional monetary award can only be imposed upon petitioner who pursued the present appeal.

SAMSON CHING, *Petitioner*, -versus- CLARITA NICDAO and HON. COURT OF APPEALS, *Respondents*.
G.R. No. 141181, April 27, 2007, THIRD DIVISION CALLEJO, SR., J.

It is axiomatic that "every person criminally liable for a felony is also civilly liable." Under the pertinent provision of the Revised Rules of Court, the civil action is generally impliedly instituted with the criminal action.

From the foregoing, petitioner Ching correctly argued that he, as the offended party, may appeal the civil aspect of the case notwithstanding respondent Nicdao's acquittal by the CA. The civil action was impliedly instituted with the criminal action since he did not reserve his right to institute it separately nor did he institute the civil action prior to the criminal action.

FACTS:

On October 21, 1997, petitioner Ching, a Chinese national, instituted criminal complaints for eleven counts of violation of BP 22 against respondent Nicdao. Consequently, eleven Informations were filed with the First Municipal Circuit Trial Court of Dinalupihan-Hermosa, Province of Bataan.
At her arraignment, respondent Nicdao entered the plea of "not guilty" to all the charges.

Petitioner Ching averred that the checks were issued to him by respondent Nicdao as security for the loans that she obtained from him. Their transaction began sometime in October 1995 when respondent Nicdao, proprietor/manager of Vignette Superstore, together with her husband, approached him to borrow money in order for them to settle their financial obligations. They agreed that respondent Nicdao would leave the checks undated and that she would pay the loans within one year. However, when petitioner Ching went to see her after the lapse of one year to ask for payment, respondent Nicdao allegedly said that she had no cash.

Petitioner Ching claimed that he went back to respondent Nicdao several times more but every time, she would tell him that she had no money. Then in September 1997, respondent Nicdao allegedly got mad at him for being insistent and challenged him about seeing each other in court. Because of respondent Nicdao's alleged refusal to pay her obligations, on October 6, 1997, petitioner Ching deposited the checks that she issued to him. As he earlier stated, the checks were dishonored by the bank for being "DAIF." Shortly thereafter, petitioner Ching, together with Emma Nuguid, wrote a demand letter to respondent Nicdao which, however, went unheeded. Accordingly, they separately filed the criminal complaints against the latter.

The MTC convicted respondent Nicdao of eleven (11) counts of violation of BP 22. The MCTC gave credence to petitioner Ching's testimony that respondent Nicdao borrowed money from him in the total amount of ₱20,950,000.00. Petitioner Ching delivered ₱1,000,000.00 every month to respondent Nicdao from 1995 up to 1997 until the sum reached ₱20,000,000.00. The MCTC also found that subsequent thereto, respondent Nicdao still borrowed money from petitioner Ching. As security for these loans, respondent Nicdao issued checks to petitioner Ching. When the latter deposited the checks on October 6, 1997, they were dishonored by the bank for being "DAIF."

On appeal, the Regional Trial Court of Dinalupihan, Bataan, affirmed the decisions.

Respondent Nicdao forthwith filed with the CA separate petitions for review of the two decisions of the RTC.

The CA acquitted respondent Nicdao of the eleven (11) counts of violation of BP 22 filed against her by petitioner Ching.

ISSUE:

Whether or not petitioner may appeal the civil aspect of the case despite Nicdao's acquittal.

RULING:

The petition is denied for lack of merit.

Notwithstanding respondent Nicdao's acquittal, petitioner Ching is entitled to appeal the civil aspect of the case within the reglementary period.

It is axiomatic that "every person criminally liable for a felony is also civilly liable." Under the pertinent provision of the Revised Rules of Court, the civil action is generally impliedly instituted with the criminal action.

From the foregoing, petitioner Ching correctly argued that he, as the offended party, may appeal the civil aspect of the case notwithstanding respondent Nicdao's acquittal by the CA. The civil action was impliedly instituted with the criminal action since he did not reserve his right to institute it separately nor did he institute the civil action prior to the criminal action.

Following the long-recognized rule that "the appeal period accorded to the accused should also be available to the offended party who seeks redress of the civil aspect of the decision," the period to appeal granted to petitioner Ching is the same as that granted to the accused. With petitioner Ching's timely filing of the instant petition for review of the civil aspect of the CA's decision, the Court thus has the jurisdiction and authority to determine the civil liability of respondent Nicdao notwithstanding her acquittal.

However, the acquittal of respondent Nicdao likewise effectively extinguished her civil liability.

First, the CA's acquittal of respondent Nicdao is not merely based on reasonable doubt. Rather, it is based on the finding that she did not commit the act penalized under BP 22. In particular, the CA found that the ₱20,000,000.00 check was a stolen check which was never issued nor delivered by respondent Nicdao to petitioner Ching. As such, according to the CA, petitioner Ching "did not acquire any right or interest over Check No. 002524 and cannot assert any cause of action founded on said check,"and that respondent Nicdao "has no obligation to make good the stolen check and cannot, therefore, be held liable for violation of B.P. Blg. 22.

JUDITH YU, *Petitioner*, -versus- HON. ROSA SAMSON-TATAD, Presiding Judge, Regional Trial Court, Quezon City, Branch 105, and the PEOPLE OF THE PHILIPPINES, *Respondents.*
G.R. No. 170979, February 9, 2011, THIRD DIVISION, BRION, J.:

In Neypes, the Court modified the rule in civil cases on the counting of the 15-day period within which to appeal. The Court categorically set a fresh period of 15 days from a denial of a motion for reconsideration within which to appeal. While Neypes involved the period to appeal in civil cases, the Court's pronouncement of a "fresh period" to appeal should equally apply to the period for appeal in criminal cases.

FACTS:

Based on the complaint of Spouses Sergio and Cristina Casaclang, an information for estafa against the petitioner was filed with the RTC.

The RTC convicted the petitioner as charged. It imposed on her a penalty of three (3) months of imprisonment, a fine of ₱3,800,000.00 with subsidiary imprisonment, and the payment of an indemnity to the Spouses Casaclang in the same amount as the fine.

Fourteen (14) days later, or on June 9, 2005, the petitioner filed a motion for new trial with the RTC, alleging that she discovered new and material evidence that would exculpate her of the crime for which she was convicted.
In an October 17, 2005 order, respondent Judge denied the petitioner's motion for new trial for lack of merit.

On November 16, 2005, the petitioner filed a notice of appeal with the RTC, alleging that pursuant to our ruling in Neypes v. Court of Appeals, she had a "fresh period" of 15 days from November 3, 2005, the receipt of the denial of her motion for new trial, or up to November 18, 2005, within which to file a notice of appeal.

On November 24, 2005, the respondent Judge ordered the petitioner to submit a copy of Neypes.

On December 8, 2005, the prosecution filed a motion to dismiss the appeal for being filed 10 days late, arguing that Neypes is inapplicable to appeals in criminal cases.

On January 4, 2006, the prosecution filed a motion for execution of the decision.

On January 20, 2006, the RTC considered the twin motions submitted for resolution.

On January 26, 2006, the petitioner filed the present petition for prohibition with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction to enjoin the RTC from acting on the prosecution's motions to dismiss the appeal and for the execution of the decision.10

The petitioner argues that the RTC lost jurisdiction to act on the prosecution's motions when she filed her notice of appeal within the 15-day reglementary period provided by the Rules of Court, applying the "fresh period rule" enunciated in Neypes.

The respondent People of the Philippines, through the Office of the Solicitor General (OSG), filed a manifestation in lieu of comment, stating that Neypes applies to criminal actions since the evident intention of the "fresh period rule" was to set a uniform appeal period provided in the Rules.

In their comment, the Spouses Casaclang aver that the petitioner cannot seek refuge in Neypes to extend the "fresh period rule" to criminal cases because Neypes involved a civil case, and the

pronouncement of "standardization of the appeal periods in the Rules" referred to the interpretation of the appeal periods in civil cases, i.e., Rules 40, 41, 42 and 45, of the 1997 Rules of Civil Procedure among others; nowhere in Neypes was the period to appeal in criminal cases, Section 6 of Rule 122 of the Revised Rules of Criminal Procedure, mentioned.

ISSUE:

Whether the "fresh period rule" enunciated in Neypes applies to appeals in criminal cases.

RULING:

We find merit in the petition.

In Neypes, the Court modified the rule in civil cases on the counting of the 15-day period within which to appeal. The Court categorically set a fresh period of 15 days from a denial of a motion for reconsideration within which to appeal. The Court also reiterated its ruling that it is the denial of the motion for reconsideration that constituted the final order which finally disposed of the issues involved in the case.

The raison d'être for the "fresh period rule" is to standardize the appeal period provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. Thus, the 15-day period to appeal is no longer interrupted by the filing of a motion for new trial or motion for reconsideration; litigants today need not concern themselves with counting the balance of the 15-day period to appeal since the 15-day period is now counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.

While Neypes involved the period to appeal in civil cases, the Court's pronouncement of a "fresh period" to appeal should equally apply to the period for appeal in criminal cases under Section 6 of Rule 122 of the Revised Rules of Criminal Procedure or the following reasons:

First, BP 129, as amended, the substantive law on which the Rules of Court is based, makes no distinction between the periods to appeal in a civil case and in a criminal case. Section 39 of BP 129 categorically states that "[t]he period for appeal from final orders, resolutions, awards, judgments, or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from." When the law makes no distinction, we the court also ought not to recognize any distinction.

Second, the provisions of Section 3 of Rule 41 of the 1997 Rules of Civil Procedure and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure, though differently worded, mean exactly the same. There is no substantial difference between the two provisions insofar as legal results are concerned – the appeal period stops running upon the filing of a motion for new trial or reconsideration and starts to run again upon receipt of the order denying said motion for new trial or reconsideration. No reason exists why this situation in criminal cases cannot be similarly addressed.

Third, while the Court did not consider in Neypes the ordinary appeal period in criminal cases under Section 6, Rule 122 of the Revised Rules of Criminal Procedure since it involved a purely civil case, it did include Rule 42 of the 1997 Rules of Civil Procedure on petitions for review from the RTCs to the Court of Appeals (CA), and Rule 45 of the 1997 Rules of Civil Procedure governing appeals by

certiorari to this Court, both of which also apply to appeals in criminal cases, as provided by Section 3 of Rule 122 of the Revised Rules of Criminal Procedure.

Clearly, if the modes of appeal to the CA (in cases where the RTC exercised its appellate jurisdiction) and to this Court in civil and criminal cases are the same, no cogent reason exists why the periods to appeal from the RTC (in the exercise of its original jurisdiction) to the CA in civil and criminal cases under Section 3 of Rule 41 of the 1997 Rules of Civil Procedure and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure should be treated differently.

Were we to strictly interpret the "fresh period rule" in Neypes and make it applicable only to the period to appeal in civil cases, we shall effectively foster and encourage an absurd situation where a litigant in a civil case will have a better right to appeal than an accused in a criminal case – a situation that gives undue favor to civil litigants and unjustly discriminates against the accused-appellants. It suggests a double standard of treatment when we favor a situation where property interests are at stake, as against a situation where liberty stands to be prejudiced. We must emphatically reject this double and unequal standard for being contrary to reason. Over time, courts have recognized with almost pedantic adherence that what is contrary to reason is not allowed in law.

In light of these legal realities, we hold that the petitioner seasonably filed her notice of appeal on November 16, 2005, within the fresh period of 15 days, counted from November 3, 2005, the date of receipt of notice denying her motion for new trial.