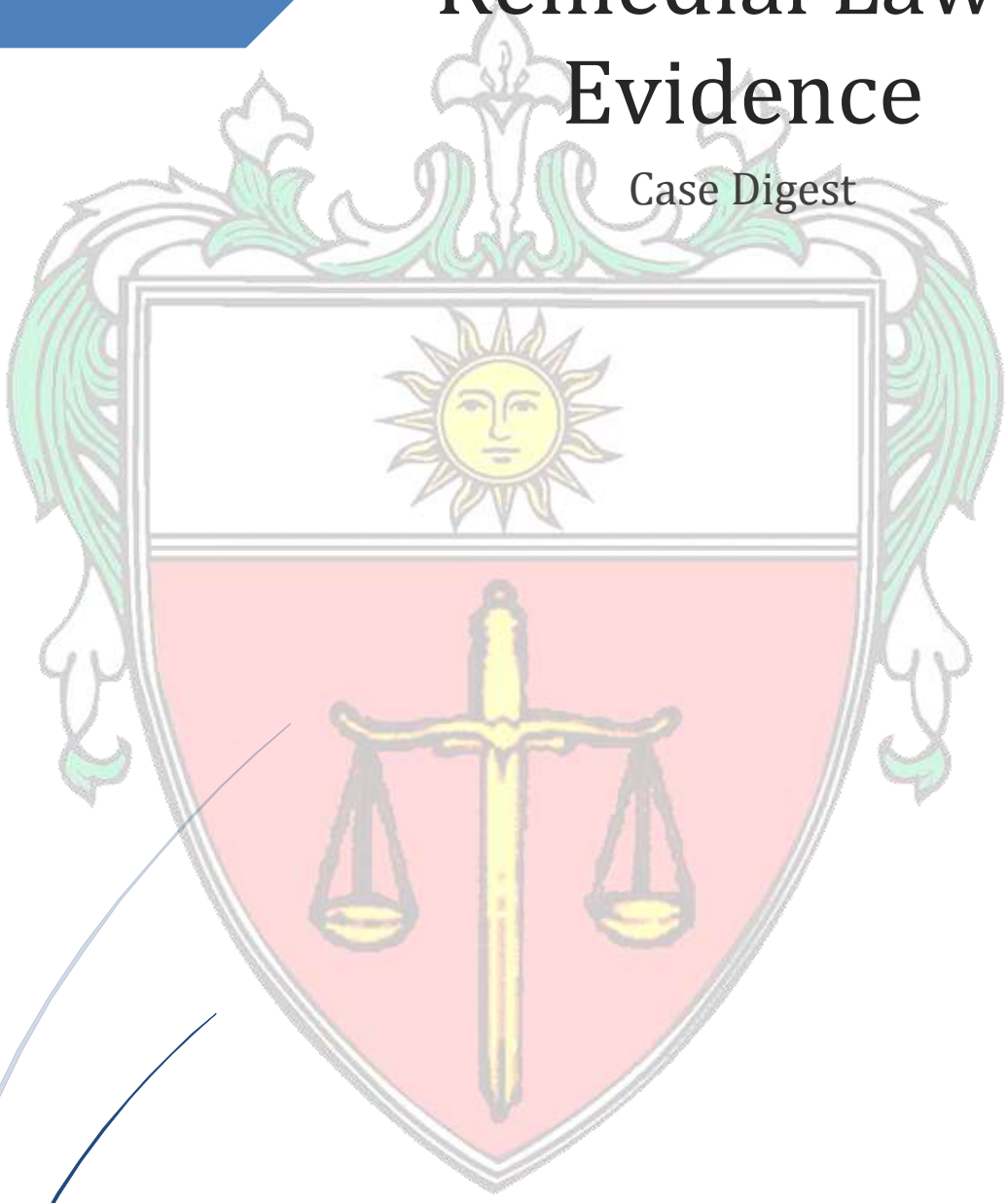
Remedial Law - Evidence

Case Digest



UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

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ERNESTO B. FRANCISCO, JR., *Petitioners,* NAGMAMALASAKIT NA MGA MANANANGGOL NG MGA MANGGAGAWANG PILIPINO, INC., ITS OFFICERS AND MEMBERS*, Petitioner-in-intervention,*
WORLD WAR II VETERANS LEGIONARIES OF THE PHILIPPINES, INC., Petitioner-in-intervention* - versus - THE HOUSE OF REPRESENTATIVES, REPRESENTED BY SPEAKER JOSE G. DE VENECIA, THE SENATE, REPRESENTED BY SENATE PRESIDENT FRANKLIN M. DRILON, REPRESENTATIVE GILBERTO C. TEODORO, JR. AND REPRESENTATIVE FELIX WILLIAM B. FUENTEBELLA, *Respondents,* JAIME N. SORIANO*, Respondent-in-Intervention,
SENATOR AQUILINO Q. PIMENTEL*, Respondent-in-intervention*
G.R. No. 160261, EN BANC, November 10, 2003, CARPIO MORALES, *J.*

The claim, therefore, that this Court by judicially entangling itself with the process of impeachment has effectively set up a regime of judicial supremacy, is patently without basis in fact and in law.

This Court in the present petitions subjected to judicial scrutiny and resolved on the merits only the main issue of whether the impeachment proceedings initiated against the Chief Justice transgressed the constitutionally imposed one-year time bar rule. Beyond this, it did not go about assuming jurisdiction where it had none, nor indiscriminately turn justiciable issues out of decidedly political questions. Because it is not at all the business of this Court to assert judicial dominance over the other two great branches of the government. Rather, the raison d'etre of the judiciary is to complement the discharge by the executive and legislative of their own powers to bring about ultimately the beneficent effects of having founded and ordered our society upon the rule of law.

It is suggested that by our taking cognizance of the issue of constitutionality of the impeachment proceedings against the Chief Justice, the members of this Court have actually closed ranks to protect a brethren. That the members' interests in ruling on said issue is as much at stake as is that of the Chief Justice. Nothing could be farther from the truth.

FACTS:

In late 2001 House of Representatives (HOR) of the 12th Congress adopted its Rules of Procedure in Impeachment Proceedings. The new rules superseded impeachment Rules of the 11th Congress. Secs. 16 and 17 of these Rules state that impeachment proceedings are deemed initiated (1) if House Committee on Justice deems the complaint sufficient in substance, or (2) if the House itself affirms or overturns the findings of the House Committee on Justice on the substance of the complaint, or (3) by filing or endorsement before the HOR Secretary General by one-thirds of the members of the House.

A few months later, HoR passed a resolution directing the Committee on Justice to conduct an investigation, in aid of legislation, on the manner of disbursements and expenditures by Chief Justice Davide of the Judiciary Development Fund (JDF)."

In June 2003, former President Estrada files the first impeachment complaint against Chief Justice Davide and 7 Associate Justices of SC for "culpable violation of the Constitution, betrayal of public trust and other high crimes." The complaint was referred to the House Committee on Justice on August 5, 2003 in accordance with Section 3(2) of Article XI of the Constitution.

On October 13, 2003, the HOR Committee on Justice found the first impeachment complaint "sufficient in form." However, it also voted to dismiss the same on October 22, 2003 for being

insufficient in substance. Ten days later, on October 23,2003, Teodoro and Fuentebella filed a second impeachment complaint against CJ Davide, founded on the alleged results of the legislative inquiry on the JDF. The second impeachment complaint was accompanied by a "resolution of Endorsement/Impeachment" signed by at least one-third of all the Members of the House of Representatives.

Several petitions were filed with the SC by members of the bar, members of the House of Representatives, as well as private individuals, all asserting their rights, among others, as taxpayers to stop the illegal spending of public funds for the impeachment proceedings against the Chief Justice. The petitioners contend that Article XI, Section 3 (5) of the 1987 Constitution bars the filing of the second impeachment complaint. The constitutional provision states that "(n)o impeachment proceedings shall be initiated against the same official more than once within a period of one year."

Speaker Jose de Venecia submitted a manifestaiton to the SC stating that the High Court does not have jurisdiction to hear the case as it would mean an encroachment on the power of House of Representatives, a co-equal branch of government.

ISSUES:

1. Whether or not the offenses alleged in the Second impeachment complaint constitute valid impeachable offenses under the Constitution.

2. Whether or not Sections 15 and 16 of Rule V of the Rules on Impeachment adopted by the 12th Congress are unconstitutional for violating the provisions of Section 3, Article XI of the Constitution.

3. Whether the second impeachment complaint is barred under Section 3(5) of Article XI of the Constitution.

RULING:

1. This issue is a non-justiciable political question which is beyond the scope of the judicial power of the Supreme Court under Section 1, Article VIII of the Constitution. Any discussion of this issue would require the Court to make a determination of what constitutes an impeachable offense. Such a determination is a purely political question which the Constitution has left to the sound discretion of the legislation. Such an intent is clear from the deliberations of the Constitutional Commission.

Courts will not touch the issue of constitutionality unless it is truly unavoidable and is the very lis mota or crux of the controversy.

2. **YES.** Rule of Impeachment adopted by the House of Congress is unconstitutional. Section 3 of Article XI provides that "The Congress shall promulgate its rules on impeachment to effectively carry out the purpose of this section." Clearly, its power to promulgate its rules on impeachment is limited by the phrase "to effectively carry out the purpose of this section." Hence, these rules cannot contravene the very purpose of the Constitution which said rules were intended to effectively carry out. Moreover, Section 3 of Article XI clearly provides for other specific limitations on its power to make rules.

It is basic that all rules must not contravene the Constitution which is the fundamental law. If as alleged Congress had absolute rule making power, then it would by necessary implication have the power to alter or amend the meaning of the Constitution without need of referendum.

3**. YES.** It falls within the one year bar provided in the Constitution. Having concluded that the initiation takes place by the act of filing of the impeachment complaint and referral to the House Committee on Justice, the initial action taken thereon, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated in the foregoing manner, another may not be filed against the same official within a one year period following Article XI, Section 3(5) of the Constitution.

Considering that the first impeachment complaint, was filed by former President Estrada against Chief Justice Hilario G. Davide, Jr., along with seven associate justices of this Court, on June 2, 2003 and referred to the House Committee on Justice on August 5, 2003, the second impeachment complaint filed by Representatives Gilberto C. Teodoro, Jr. and Felix William Fuentebella against the Chief Justice on October 23, 2003 violates the constitutional prohibition against the initiation of impeachment proceedings against the same impeachable officer within a one-year period.

Hence, Sections 16 and 17 of Rule V of the Rules of Procedure in Impeachment Proceedings which were approved by the House of Representatives on November 28, 2001 are unconstitutional. Consequently, the second impeachment complaint against Chief Justice Hilario G. Davide, Jr. which was filed by Representatives Gilberto C. Teodoro, Jr. and Felix William B. Fuentebella with the Office of the Secretary General of the House of Representatives on October 23, 2003 is barred under paragraph 5, section 3 of Article XI of the Constitution.

PEOPLE OF THE PHILIPPINES, *Petitioner,*-versus –
ANTONIO LAUGA Y PINA ALIAS TERIO, *Respondent.*
G.R. No. 186228, SECOND DIVISION, March 15, 2010, PEREZ, *J.*

FACTS:

Antonio Lauga was accused of qualified rape committed against his 13-year old daughter. One of the witnesses for the prosecution was Moises Boy Banting, a bantay bayan in the barangay. Banting testified that after his assistance was sought, he proceeded to Lauga's house and found the latter wearing only his underwear. He invited Lauga to the police station, to which Lauga obliged. At the police outpost, Lauga admitted to him that he raped his daughter AAA because he was unable to control himself. Lauga contested the admissibility in evidence of his alleged confession with Banting. He argues that even if he, indeed, confessed to Moises Boy Banting, a "bantay bayan," the confession was inadmissible in evidence because he was not assisted by a lawyer and there was no valid waiver of such requirement.

ISSUE:

Whether or not the extrajudicial confession made with a "bantay bayan" admissible in evidence.

RULING: NO.
Extrajudicial confession before a bantay bayan taken without counsel is inadmissible in evidence. This Court is convinced that barangay-based volunteer organizations in the nature of watch groups, as in the case of the "bantay bayan," are recognized by the local government unit to perform functions

relating to the preservation of peace and order at the barangay level. Thus, without ruling on the legality of the actions taken by Moises Boy Banting, and the specific scope of duties and responsibilities delegated to a "bantay bayan," particularly on the authority to conduct a custodial investigation, any inquiry he makes has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights provided for under Article III, Section 12 of the Constitution, otherwise known as the Miranda Rights, is concerned. We, therefore, find the extrajudicial confession of appellant, which was taken without a counsel, inadmissible in evidence.

The case of People v. Malngan is the authority on the scope of the Miranda doctrine provided for under Article III, Section 12(1) and (3) of the Constitution. In Malngan, appellant questioned the admissibility of her extrajudicial confessions given to the barangay chairman and a neighbor of the private complainant. This Court distinguished. Thus:

Arguably, the barangay tanods, including the Barangay Chairman, in this particular instance, may be deemed as law enforcement officer for purposes of applying Article III, Section 12(1) and (3), of the Constitution. When accused-appellant was brought to the barangay hall in the morning of 2 January 2001, she was already a suspect, actually the only one, in the fire that destroyed several houses x x x. She was, therefore, already under custodial investigation and the rights guaranteed by x x x [the] Constitution should have already been observed or applied to her. Accused-appellant's confession to Barangay Chairman x x x was made in response to the 'interrogation' made by the latter – admittedly conducted without first informing accused-appellant of her rights under the Constitution or done in the presence of counsel. For this reason, the confession of accused-appellant, given to Barangay Chairman x x x, as well as the lighter found x x x in her bag are inadmissible in evidence against her x x x.

[But such does] not automatically lead to her acquittal. x x x [T]he constitutional safeguards during custodial investigations do not apply to those not elicited through questioning by the police or their agents but given in an ordinary manner whereby the accused verbally admits x x x as x x x in the case at bar when accused-appellant admitted to Mercedita Mendoza, one of the neighbors x x x [of the private complainant].

Following the rationale behind the ruling in Malngan, this Court needs to ascertain whether or not a "bantay bayan" may be deemed a law enforcement officer within the contemplation of Article III, Section 12 of the Constitution.

In People of the Philippines v. Buendia, this Court had the occasion to mention the nature of a "bantay bayan," that is, "a group of male residents living in [the] area organized for the purpose of keeping peace in their community[,which is] an accredited auxiliary of the x x x PNP."

Also, it may be worthy to consider that pursuant to Section 1(g) of Executive Order No. 309 issued on 11 November 1987, as amended, a Peace and Order Committee in each barangay shall be organized "to serve as implementing arm of the City/Municipal Peace and Order Council at the Barangay level."

The composition of the Committee includes, among others: (1) the Punong Barangay as Chairman; (2) the Chairman of the Sangguniang Kabataan; (3) a Member of the Lupon Tagapamayapa; (4) a Barangay Tanod; and (5) at least three (3) Members of existing Barangay-Based Anti-Crime or neighborhood Watch Groups or a Non Government Organization Representative well-known in his community.

CORINTHIAN GARDENS ASSOCIATION, INC., *Petitioner,* -versus - SPOUSES REYNALDO and MARIA LUISA TANJANGCO, and SPOUSES FRANK and TERESITA CUASO, *Respondents.*
G.R. No. 160795, THIRD DIVISION, June 27, 2008, NACHURA, *J.*

The court may take judicial notice of matters of public knowledge, or which are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Before taking such judicial notice, the court must "allow the parties to be heard thereon." Hence, there can be no judicial notice on the rental value of the premises in question without supporting evidence.

FACTS:

Spouses Reynaldo and Maria Luisa Tanjangco (the Tanjangcos) own Lots 68 and 69 covered by Transfer Certificates of Title (TCT) No. 2422454 and 2829615 respectively, located at Corinthian Gardens Subdivision, Quezon City, which is managed by petitioner Corinthian Gardens Association, Inc. (Corinthian). On the other hand, respondents-spouses Frank and Teresita Cuaso (the Cuasos) own Lot 65 which is adjacent to the Tanjangcos' lots.

Before the Cuasos constructed their house, it was surveyed by De Dios Realty the surveyor as per recommendation of the petitioner association. Later on, Corinthian Gardens Association approved the plans made by the builder CB Paras Construction.

Corinthian conducted periodic ocular inspections in order to determine compliance with the approved plans pursuant to the Manual of Rules and Regulations of Corinthian (MRRC). Unfortunately, after construction, the perimeter fence of the Cuasos' encroached upon Tanjancos' lot.

The Cuasos ascribed negligence to C.B. Paraz for its failure to ascertain the proper specifications of their house, and to Engr. De Dios for his failure to undertake an accurate relocation survey, thereby, exposing them to litigation. The Cuasos also faulted Corinthian for approving their relocation survey and building plans without verifying their accuracy and in making representations as to Engr. De Dios' integrity and competence. The Cuasos alleged that had Corinthian exercised diligence in performing its duty, they would not have been involved in a boundary dispute with the Tanjangcos. Thus, the Cuasos opined that Corinthian should also be held answerable for any damages that they might incur as a result of such construction.

ISSUE:

Whether or not the court may take judicial notice over general increase in the rentals of real estate.

RULING: NO.

Truly, mere judicial notice is inadequate, because evidence is required for a court to determine the proper rental value. But contrary to Corinthian's arguments, both the RTC and the CA found that indeed rent was due the Tanjangcos because they were deprived of possession and use of their property. This uniform factual finding of the RTC and the CA was based on the evidence presented below. Moreover, in Spouses Catungal v. Hao, 43 we considered the increase in the award of rentals as reasonable given the particular circumstances of each case. We noted therein that the respondent denied the petitioners the benefits, including rightful possession, of their property for almost a decade.

Our ruling in Spouses Badillo v. Tayag is instructive. Citing Sia v. Court of Appeals [272 SCRA 141, May 5, 1997], petitioners argue that the MTC may take judicial notice of the reasonable rental or the general price increase of land in order to determine the amount of rent that may be awarded to them. In that case, however, this Court relied on the CA's factual findings, which were based on the evidence presented before the trial court. In determining reasonable rent the RTC therein took account of the following factors: 1) the realty assessment of the land, 2) the increase in realty taxes, and 3) the prevailing rate of rentals in the vicinity. Clearly, the trial court relied, not on mere judicial notice, but on the evidence presented before it.

Indeed, courts may fix the reasonable amount of rent for the use and occupation of a disputed property. However, petitioners herein erred in assuming that courts, in determining the amount of rent, could simply rely on their own appreciation of land values without considering any evidence. As we have said earlier, a court may fix the reasonable amount of rent, but it must still base its action on the evidence adduced by the parties.

In Herrera v. Bollos [G.R. No. 138258, January 18, 2002], the trial court awarded rent to the defendants in a forcible entry case. Reversing the RTC, this Court declared that the reasonable amount of rent could be determined not by mere judicial notice, but by supporting evidence. A court cannot take judicial notice of a factual matter in controversy. The court may take judicial notice of matters of public knowledge, or which are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Before taking such judicial notice, the court must "allow the parties to be heard thereon." Hence, there can be no judicial notice on the rental value of the premises in question without supporting evidence.

SOCIAL JUSTICE SOCIETY (SJS), VLADIMIR ALARIQUE T. CABIGAO and BONIFACIO S. TUMBOKON, *Petitioners,* -versus - HON. JOSE L. ATIENZA, JR., in his capacity as Mayor of the City of Manila, *Respondent.*
G.R. No. 156052, FIRST DIVISION, February 13, 2008, CORONA, *J.*

Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of. Counsel should take the initiative in requesting that a trial court take judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances.

FACTS:

The City Council of Manila enacted Ordinance No. 8027 which reclassified the Pandacan Area from Industrial to commercial, and directed the owners and operators of businesses disallowed uder the reclassificiation to cease and desist from operating their businesses within six months from effectivity date of the ordinance, Most affected are the oil companies composed of Shell, Chevron, (Caltex) and Petron whose oil depots are located therein.

Despote the ordinance, the Sanggunian adopted Resolution No. 13 extending the agreement of scalling down of the Pandacan depots up to April 2003 and authorized the mayor of Manila to issue special business spermits to the oil companies. Nevertheless, the petitioners field a petition for mandamus which ought to compel the Mayor to enforce the Ordinance no. 8027. The oil companies questioned the constitutionality of the ordinance.

ISSUE:

1. Whether or not the trial court may take judicial notice of Ordinance No. 8119 entitled "An Ordinance Adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment thereto.

2. Whether or not the respondents judicially admitted that Ordinance No. 8027 was repealed by Ordinance No. 8119 in civil case no. 03-106379 (Petron assailed the constitutionality of Ordinance No. 8027).

RULING:

1. NO. In resolving controversies, courts can only consider facts and issues pleaded by the parties. Courts, as well as magistrates presiding over them are not omniscient. They can only act on the facts and issues presented before them in appropriate pleadings. They may not even substitute their own personal knowledge for evidence. Nor may they take notice of matters except those expressly provided as subjects of mandatory judicial notice.

The March 7, 2007 decision did not take into consideration the passage of Ordinance No. 8119 entitled "An Ordinance Adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment thereto" which was approved by respondent on June 16, 2006. The simple reason was that the Court was never informed about this ordinance.

While courts are required to take judicial notice of the laws enacted by Congress, the rule with respect to local ordinances is different. Ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court.

Although, Section 50 of RA 40974 provides that: all courts sitting in the city shall take judicial notice of the ordinances passed by the Sangguniang Panglungsod.

This cannot be taken to mean that this Court, since it has its seat in the City of Manila, should have taken steps to procure a copy of the ordinance on its own, relieving the party of any duty to inform the Court about it.

Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of. Counsel should take the initiative in requesting that a trial court take judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances.

The intent of a statute requiring a court to take judicial notice of a local ordinance is to remove any discretion a court might have in determining whether or not to take notice of an ordinance. Such a statute does not direct the court to act on its own in obtaining evidence for the record and a party must make the ordinance available to the court for it to take notice.

2. NO. While it is true that a party making a judicial admission cannot subsequently take a position contrary to or inconsistent with what was pleaded, the aforestated rule is not applicable here. Respondent made the statements regarding the ordinances in civil case nos. 03-106379 and 06-115334 which are not "the same" as this case before us. To constitute a judicial admission, the admission must be made in the same case in which it is offered.

Rule 129, Section 4 of the Rules of Court provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Hence, respondent is not estopped from claiming that Ordinance No. 8119 did not supersede Ordinance No. 8027. On the contrary, it is the oil companies which should be considered estopped. They rely on the argument that Ordinance No. 8119 superseded Ordinance No. 8027 but, at the same time, also impugn its (8119's) validity. We frown on the adoption of inconsistent positions and distrust any attempt at clever positioning under one or the other on the basis of what appears advantageous at the moment. Parties cannot take vacillating or contrary positions regarding the validity of a statute or ordinance. Nonetheless, we will look into the merits of the argument of implied repeal.

"G" HOLDINGS, INC., *Petitioner,* -versus - NATIONAL MINES AND ALLIED WORKERS UNION Local 103 (NAMAWU); SHERIFFS RICHARD H. APROSTA and ALBERTO MUNOZ, all acting Sheriffs; DEPARTMENT OF LABOR AND EMPLOYMENT, Region VI, Bacolod District Office, Bacolod City, *Respondents.*
G.R. No. 160236, THIRD DIVISION, October 16, 2009, NACHURA, *J.*

The assailed CA decision apparently failed to consider the impact of these two decisions on the case at bar. Thus, we find it timely to reiterate that: "courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable to the case under consideration."

FACTS:

The petitioner, "G" Holdings, Inc. (GHI), bought ninety percent (90%) of MMC's shares and financial claims. These financial claims were converted into three Promissory Notes issued by MMC in favor of GHI totaling P500M and secured by mortgages over MMC's properties. National Mines and Allied Workers Union Local 103 (NAMAWU), was the exclusive bargaining agent of the rank and file employees of Maricalum Mining Corporation (MMC).

GHI immediately took physical possession of the mine site and its facilities, and took full control of the management and operation of MMC.

Almost four years thereafter, or on August 23, 1996, a labor dispute (refusal to bargain collectively and unfair labor practice) arose between MMC and NAMAWU

ISSUE:

Whether or not the Court may take judicial notice of its Decision in Maricalum Mining Corporation v. Hon. Arturo D. Brion and NAMAWU.

RULING: YES.

Judicial notice must be taken by this Court of its Decision in Maricalum Mining Corporation v. Hon. Arturo D. Brion and NAMAWU, in which we upheld the right of herein private respondent, NAMAWU, to its labor claims. Upon the same principle of judicial notice, we acknowledge our Decision in Republic of the Philippines, through its trustee, the Asset Privatization Trust v. "G" Holdings, Inc., in which GHI was recognized as the rightful purchaser of the shares of stocks of MMC, and thus, entitled to the delivery of the company notes accompanying the said purchase. These company notes, consisting of three (3) Promissory Notes, were part of the documents executed in 1992 in the privatization sale of MMC by the Asset Privatization Trust (APT) to GHI. Each of these notes uniformly contains stipulations "establishing and constituting in favor of GHI" mortgages over MMC's real and personal properties. The stipulations were subsequently formalized in a separate document denominated Deed of Real Estate and Chattel Mortgage on September 5, 1996. Thereafter, the Deed was registered on February 4, 2000.

We find both decisions critically relevant to the instant dispute. In fact, they should have guided the courts below in the disposition of the controversy at their respective levels. To repeat, these decisions respectively confirm the right of NAMAWU to its labor claims and affirm the right of GHI to its financial and mortgage claims over the real and personal properties of MMC, as will be explained below. The assailed CA decision apparently failed to consider the impact of these two decisions on the case at bar. Thus, we find it timely to reiterate that: "courts have also taken judicial notice of previous cases to determine whether or not the case pending is a moot one or whether or not a previous ruling is applicable to the case under consideration."

However, the CA correctly assessed that the authority of the lower court to issue the challenged writ of injunction depends on the validity of the third party's (GHI's) claim of ownership over the property subject of the writ of execution issued by the labor department. Accordingly, the main inquiry addressed by the CA decision was whether GHI could be treated as a third party or a stranger to the labor dispute, whose properties were beyond the reach of the Writ of Execution dated December 18, 2001.

In this light, all the more does it become imperative to take judicial notice of the two cases aforesaid, as they provide the necessary perspective to determine whether GHI is such a party with a valid ownership claim over the properties subject of the writ of execution. In Juaban v. Espina, we held that "in some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases may be so closely interwoven, or so clearly interdependent, as to invoke a rule of judicial notice." The two cases that we have taken judicial notice of are of such character, and our review of the instant case cannot stray from the findings and conclusions therein.

SPOUSES OMAR and MOSHIERA LATIP, *Petitioners,* -versus –
ROSALIE PALAÑA CHUA, *Respondents.*
G.R. No. 205090, SECOND DIVISION, October 16, 2009, NACHURA, *J.*

The requisite of notoriety is belied by the necessity of attaching documentary evidence, i.e., the Joint Affidavit of the stallholders, to Rosalie's appeal before the CA. In short, the alleged practice still had to be proven by Rosalie; contravening the title itself of Rule 129 of the Rules of Court – What need not be proved.

Apparently, only that particular division of the CA had knowledge of the practice to pay goodwill money in the Baclaran area. As was held in State Prosecutors, justices and judges alike ought to be reminded that the power to take judicial notice must be exercised with caution and every reasonable doubt on the subject should be ample reason for the claim of judicial notice to be promptly resolved in the negative.

FACTS:

Rosalie Chua (Rosalie) is the owner of Roferxane Building, a commercial building, located at No. 158 Quirino Avenue corner Redemptorist Road, Barangay Baclaran, Parañaque City.

On July 6, 2001, Rosalie filed a complaint for unlawful detainer plus damages against petitioners, Spouses Omar and Moshiera Latip (Spouses Latip). Rosalie attached to the complaint a contract of lease over two cubicles in Roferxane Bldg., signed by Rosalie, as lessor, and by Spouses Latip, as lessees thereof.

ISSUE:

Whether or not the Court may take judicial notice of practice of payment of goodwill money in the Baclaran area.

RULING: NO.

On the conflicting interpretations by the lower courts of the receipts amounting to ₱2,570,000.00, we hold that the practice of payment of goodwill money in the Baclaran area is an inadequate subject of judicial notice. Sections 1 and 2 of Rule 129 of the Rules of Court declare when the taking of judicial notice is mandatory or discretionary on the courts. The doctrine of judicial notice rests on the wisdom and discretion of the courts. The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.

To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action. Judicial cognizance is taken only of those matters which are "commonly" known. Things of "common knowledge," of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed,

provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.

Things of "common knowledge," of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided, they are such of universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.

From the foregoing provisions of law and our holdings thereon, it is apparent that the matter which the appellate court took judicial notice of does not meet the requisite of notoriety. To begin with, only the CA took judicial notice of this supposed practice to pay goodwill money to the lessor in the Baclaran area. Neither the MeTC nor the RTC, with the former even ruling in favor of Rosalie, found that the practice was of "common knowledge" or notoriously known.

We note that the RTC specifically ruled that Rosalie, apart from her bare allegation, adduced no evidence to prove her claim that the amount of ₱2,570,000.00 simply constituted the payment of goodwill money. Subsequently, Rosalie attached an annex to her petition for review before the CA, containing a joint declaration under oath by other stallholders in Roferxane Bldg. that they had paid goodwill money to Rosalie as their lessor. On this score, we emphasize that the reason why our rules on evidence provide for matters that need not be proved under Rule 129, specifically on judicial notice, is to dispense with the taking of the usual form of evidence on a certain matter so notoriously known, it will not be disputed by the parties.

SOCIAL JUSTICE SOCIETY (SJS), VLADIMIR ALARIQUE T. CABIGAO and BONIFACIO S. TUMBOKON, *Petitioners,* -versus - HON. JOSE L. ATIENZA, JR., in his capacity as Mayor of the City of Manila, *Respondent.*
G.R. No. 156052, FIRST DIVISION, February 13, 2008, CORONA, *J.*

Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of. Counsel should take the initiative in requesting

that a trial court take judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances.

FACTS:

The City Council of Manila enacted Ordinance No. 8027 which reclassified the Pandacan Area from Industrial to commercial, and directed the owners and operators of businesses disallowed uder the reclassificiation to cease and desist from operating their businesses within six months from effectivity date of the ordinance, Most affected are the oil companies composed of Shell, Chevron, (Caltex) and Petron whose oil depots are located therein.

Despote the ordinance, the Sanggunian adopted Resolution No. 13 extending the agreement of scalling down of the Pandacan depots up to April 2003 and authorized the mayor of Manila to issue special business spermits to the oil companies. Nevertheless, the petitioners field a petition for mandamus which ought to compel the Mayor to enforce the Ordinance no. 8027. The oil companies questioned the constitutionality of the ordinance.

ISSUE:

1. Whether or not the trial court may take judicial notice of Ordinance No. 8119 entitled "An Ordinance Adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment thereto.

2. Whether or not the respondents judicially admitted that Ordinance No. 8027 was repealed by Ordinance No. 8119 in civil case no. 03-106379 (Petron assailed the constitutionality of Ordinance No. 8027).

RULING:

1. NO. In resolving controversies, courts can only consider facts and issues pleaded by the parties. Courts, as well as magistrates presiding over them are not omniscient. They can only act on the facts and issues presented before them in appropriate pleadings. They may not even substitute their own personal knowledge for evidence. Nor may they take notice of matters except those expressly provided as subjects of mandatory judicial notice.

The March 7, 2007 decision did not take into consideration the passage of Ordinance No. 8119 entitled "An Ordinance Adopting the Manila Comprehensive Land Use Plan and Zoning Regulations of 2006 and Providing for the Administration, Enforcement and Amendment thereto" which was approved by respondent on June 16, 2006. The simple reason was that the Court was never informed about this ordinance.

While courts are required to take judicial notice of the laws enacted by Congress, the rule with respect to local ordinances is different. Ordinances are not included in the enumeration of matters covered by mandatory judicial notice under Section 1, Rule 129 of the Rules of Court.

Although, Section 50 of RA 40974 provides that: all courts sitting in the city shall take judicial notice of the ordinances passed by the Sangguniang Panglungsod.

This cannot be taken to mean that this Court, since it has its seat in the City of Manila, should have taken steps to procure a copy of the ordinance on its own, relieving the party of any duty to inform the Court about it.

Even where there is a statute that requires a court to take judicial notice of municipal ordinances, a court is not required to take judicial notice of ordinances that are not before it and to which it does not have access. The party asking the court to take judicial notice is obligated to supply the court with the full text of the rules the party desires it to have notice of. Counsel should take the initiative in requesting that a trial court take judicial notice of an ordinance even where a statute requires courts to take judicial notice of local ordinances.

The intent of a statute requiring a court to take judicial notice of a local ordinance is to remove any discretion a court might have in determining whether or not to take notice of an ordinance. Such a statute does not direct the court to act on its own in obtaining evidence for the record and a party must make the ordinance available to the court for it to take notice.

2. NO. While it is true that a party making a judicial admission cannot subsequently take a position contrary to or inconsistent with what was pleaded, the aforestated rule is not applicable here. Respondent made the statements regarding the ordinances in civil case nos. 03-106379 and 06-115334 which are not "the same" as this case before us. To constitute a judicial admission, the admission must be made in the same case in which it is offered.

Rule 129, Section 4 of the Rules of Court provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Hence, respondent is not estopped from claiming that Ordinance No. 8119 did not supersede Ordinance No. 8027. On the contrary, it is the oil companies which should be considered estopped.

They rely on the argument that Ordinance No. 8119 superseded Ordinance No. 8027 but, at the same time, also impugn its (8119's) validity. We frown on the adoption of inconsistent positions and distrust any attempt at clever positioning under one or the other on the basis of what appears advantageous at the moment. Parties cannot take vacillating or contrary positions regarding the validity of a statute or ordinance. Nonetheless, we will look into the merits of the argument of implied repeal.

JESUS CUENCO., *Petitioner,* -versus - TALISAY TOURIST SPORTS COMPLEX, INCORPORATED AND MATIAS B. AZNAR III, *Respondent.*
G.R. No. 174154, THIRD DIVISION, October 17, 2008, NACHURA, *J.*

An act performed by counsel within the scope of a "general or implied authority" is regarded as an act of the client which renders respondents in estoppel. By estoppel is meant that an admission or representation is conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.

Thus, respondents are bound by the admissions made by their counsel at the pre-trial.

FACTS:

Petitioner leased from respondent a property to be operated as a cockpit. Upon expiration of the contract, respondent company conducted a public bidding for the lease of the property. Petitioner participated in the bidding. The lease was eventually awarded to another bidder. Thereafter, petitioner formally demanded, through several demand letters, for the return of his deposit in the sum of P500, 000.00. It, however, all remained unheeded.

Thus, petitioner filed a Complaint for sum of money maintaining that respondents acted in bad faith in withholding the amount of the deposit without any justifiable reason. In their Answer, respondents countered that petitioner caused physical damage to the leased premises and the cost of repair and replacement of materials amounted to more than P500,000.00.

The RTC issued a Pre-trial Order in which respondent admitted that there is no inventory of damages. The respondents later offered an inventory which was admitted by the said trial court. The RTC ruled favorably for the petitioner. The CA reversed said decision.

ISSUE:

Whether a judicial admission is conclusive and binding upon a party making the admission.

RULING: YES.

Obviously, it was on Coronado's testimony, as well as on the documentary evidence of an alleged property inventory conducted on June 4, 1998, that the CA based its conclusion that the amount of damage sustained by the leased premises while in the possession of petitioner exceeded the amount of petitioner's deposit. This contradicts the judicial admission made by respondents' counsel which should have been binding on the respondents.

Section 4, Rule 129 of the Rules of Court provides:

SEC. 4. Judicial admissions. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made.
A party may make judicial admissions in (1) the pleadings, (2) during the trial, by verbal or written manifestations or stipulations, or (3) in other stages of the judicial proceeding. The stipulation of facts at the pre-trial of a case constitutes judicial admissions. The veracity of judicial admissions require no further proof and may be controverted only upon a clear showing that the admissions were made through palpable mistake or that no admissions were made. Thus, the admissions of parties during the pre-trial, as embodied in the pre-trial order, are binding and conclusive upon them.

Respondents did not deny the admission made by their counsel, neither did they claim that the same was made through palpable mistake. As such, the stipulation of facts is incontrovertible and may be relied upon by the courts. The pre-trial forms part of the proceedings and matters dealt therein may not be brushed aside in the process of decision-making. Otherwise, the real essence of compulsory pre-trial would be rendered inconsequential and worthless. Furthermore, an act performed by counsel within the scope of a "general or implied authority" is regarded as an act of the client which renders respondents in estoppel. By estoppel is meant that an admission or representation is conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.

Thus, respondents are bound by the admissions made by their counsel at the pre-trial. Accordingly, the CA committed an error when it gave ample evidentiary weight to respondents' evidence contradictory to the judicial admission.

TOSHIBA INFORMATION EQUIPMENT (PHILS.), INC., *Petitioner,* -versus - COMMISSIONER OF INTERNAL REVENUE, *Respondent.*
G.R. No. 157594, FIRST DIVISION, March 9, 2010, LEONARDO-DE CASTRO, *J.*

In the instant case, among the facts expressly admitted by the CIR and Toshiba in their CTA-approved Joint Stipulation are that Toshiba "is a duly registered value-added tax entity in accordance with Section 107 of the Tax Code, as amended," that "is subject to zero percent (0%) value-added tax on its export sales in accordance with then Section 100(a)(2)(A) of the Tax Code, as amended."48 The CIR was bound by these admissions, which he could not eventually contradict in his Motion for Reconsideration of the CTA Decision dated October 16, 2000, by arguing that Toshiba was actually a VAT-exempt entity and its export sales were VAT-exempt transactions. Obviously, Toshiba could not have been subject to VAT and exempt from VAT at the same time. Similarly, the export sales of Toshiba could not have been subject to zero percent (0%) VAT and exempt from VAT as well.

FACTS:

Toshiba is a domestic corporation registered with the Philippine Economic Zone Authority (PEZA) as an Economic Zone (ECOZONE) export enterprise.It filed two separate applications for tax credit/refund of its unutilized input VAT payments. The CIR denied the application. On appeal, the CTA ruled that Toshiba is entitled to the credit/refund of the input VAT paid on its purchases of goods and services relative to such zero-rated export sales.

The Court of Appeals reversed the decision of the CTA in the petition for review stating that Toshiba is a tax exempt entity under R.A. No. 7916 thus not entitled to refund the VAT payments made in the domestic purchase of goods and services. The Court of Appeals further adjudged that the export sales of Toshiba were VAT-exempt, not zero-rated, transactions. The appellate court found that the Answer filed by the CIR in CTA Case No. 5762 did not contain any admission that the export sales of Toshiba were zero-rated transactions under Section 100(a)(2)(A) of the Tax Code of 1977, as amended. At the least, what was admitted by the CIR in said Answer was that the Tax Code provisions cited in the Petition for Review of Toshiba in CTA Case No. 5762 were correct. As to the Joint Stipulation of Facts and Issues filed by the parties in CTA Case No. 5762, which stated that Toshiba was subject to zero percent (0%) VAT on its export sales, the appellate court declared that the CIR signed the said pleading through palpable mistake. This palpable mistake in the stipulation of facts should not be taken against the CIR, for to do otherwise would result in suppressing the truth through falsehood.

ISSUE:

Whether or not the judicial admissions made by the parties in pre-trial conference before the Court of Tax Appeals are admissible.

RULING: YES.

The CIR cannot escape the binding effect of his judicial admissions. The Court disagrees with the Court of Appeals when it ruled in its Decision dated August 29, 2002 that the CIR could not be bound

by his admissions in the Joint Stipulation because (1) the said admissions were "made through palpable mistake" which, if countenanced, "would result in falsehood, unfairness and injustice"; and (2) the State could not be put in estoppel by the mistakes of its officials or agents. This ruling of the Court of Appeals is rooted in its conclusion that a "palpable mistake" had been committed by the CIR in the signing of the Joint Stipulation. However, this Court finds no evidence of the commission of a mistake, much more, of a palpable one.

The CIR does not deny that his counsel, Atty. Joselito F. Biazon, Revenue Attorney II of the BIR, signed the Joint Stipulation, together with the counsel of Toshiba, Atty. Patricia B. Bisda. Considering the presumption of regularity in the performance of official duty, Atty. Biazon is presumed to have read, studied, and understood the contents of the Joint Stipulation before he signed the same. It rests on the CIR to present evidence to the contrary. Yet, the Court observes that the CIR himself never alleged in his Motion for Reconsideration of the CTA Decision dated October 16, 2000, nor in his Petition for Review before the Court of Appeals, that Atty. Biazon committed a mistake in signing the Joint Stipulation. Since the CIR did not make such an allegation, neither did he present any proof in support thereof. The CIR began to aver the existence of a palpable mistake only after the Court of Appeals made such a declaration in its Decision dated August 29, 2002.

Despite the absence of allegation and evidence by the CIR, the Court of Appeals, on its own, concluded that the admissions of the CIR in the Joint Stipulation were due to a palpable mistake based on the following deduction. Scrutinizing the Answer filed by [the CIR], we rule that the Joint Stipulation of Facts and Issues signed by the CIR was made through palpable mistake. As we see it, nothing in said Answer did the CIR admit that the export sales of Toshiba were indeed zero-rated transactions. At the least, what was admitted only by the CIR concerning paragraph 4 of his Answer, is the fact that the provisions of the Tax Code, as cited by Toshiba in its petition for review filed before the CTA were correct.

The Court of Appeals provided no explanation as to why the admissions of the CIR in his Answer in CTA Case No. 5762 deserved more weight and credence than those he made in the Joint Stipulation. The appellate court failed to appreciate that the CIR, through counsel, Atty. Biazon, also signed the Joint Stipulation; and that absent evidence to the contrary, Atty. Biazon is presumed to have signed the Joint Stipulation willingly and knowingly, in the regular performance of his official duties. Additionally, the Joint Stipulation of Toshiba and the CIR was a more recent pleading than the Answer of the CIR. It was submitted by the parties after the pre-trial conference held by the CTA, and subsequently approved by the tax court. If there was any discrepancy between the admissions of the CIR in his Answer and in the Joint Stipulation, the more logical and reasonable explanation would be that the CIR changed his mind or conceded some points to Toshiba during the pre-trial conference which immediately preceded the execution of the Joint Stipulation.

The judicial admissions of the CIR in the Joint Stipulation are not intrinsically false, wrong, or illegal, and are consistent with the ruling on the VAT treatment of PEZA-registered enterprises in the previous Toshiba case. There is no basis for believing that to bind the CIR to his judicial admissions in the Joint Stipulation – that Toshiba was a VAT-registered entity and its export sales were zero-rated VAT transactions – would result in "falsehood, unfairness and injustice." The judicial admissions of the CIR are not intrinsically false, wrong, or illegal.

BANK OF THE PHILIPPINE ISLANDS, *petitioner,* vs. JESUSA P. REYES and CONRADO B. REYES, *respondents.*
G.R. No. 157177, THIRD DIVISION, February 11, 2008, AUSTRIA-MARTINEZ, J.

Physical evidence is a mute but eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence. The Court had, on many occasions, relied principally upon physical evidence in ascertaining the truth. Where the physical evidence on record runs counter to the testimonial evidence of the prosecution witnesses, the Court consistently rule that the physical evidence should prevail.

FACTS:

On December 7, 1990, respondent Jesusa Reyes together with her daughter, went to BPI Zapote Branch to open an ATM account.

Respondent informed one of petitioners employees, Mr. Capati, that they wanted to open an ATM account for the amount of P200,000.00, P100,000.00 of which shall be withdrawn from her exiting savings account with BPI bank and the other P100,000.00 will be given by her in cash.

Capati allegedly made a mistake and prepared a withdrawal slip for P200,00.00 to be withdrawn from her existing savings account with said bank and the respondent believing in good faith that Capati prepared the papers with the correct amount signed the same unaware of the mistakes in figures.

Minutes later after the slips were presented to the teller, Capati returned to where the respondent was seating and informed the latter that the withdrawable balance could not accommodate P200,000.00.

Respondent explained that she is withdrawing the amount of P100,000.00 only and then changed and correct the figure two (2) into one (1) with her signature super-imposed thereto signifying the change, afterwhich the amount of P100,000.00 in cash in two bundles containing 100 pieces of P500.00 peso bill were given to Capati with her daughter Joan witnessing the same. Thereafter Capati prepared a deposit slip for P200,000.00 in the name of resondent Jesusa Reyes with the new account no. 0235-0767-48 and brought the same to the teller's booth.

After a while, he returned and handed to the respondent her duplicate copy of her deposit to the new account reflecting the amount of P200,000.00 with receipt stamp showing December 7, as the date.

Later on, respondent would become aware that her ATM account only contained the amount of P100,000.00 with interest. Hence, she filed an action before the RTC.

Petitioner claimed that there was actually no cash involved with the transactions which happened on December 7, 1990 as contained in the bank's teller tape.

ISSUE:

Whether or not respondent Jesusa made an initial deposit of P200,000.00 in her newly opened Express Teller account on December 7, 1990.

RULING:

NO, respondent Jesusa failed to substantiate her claim that she made an initial deposit of P200,000.00 in her newly opened Express Teller account on December 7, 1990.

It is a basic rule in evidence that each party to a case must prove his own affirmative allegations by the degree of evidence required by law. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, or that evidence which is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other.

Section 1, Rule 133 of the Rules of Court provides the guidelines for determining preponderance of evidence, thus:

SECTION 1. Preponderance of evidence, how determined.- In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

For a better perspective on the calibration of the evidence on hand, it must first be stressed that the judge who had heard and seen the witnesses testify was not the same judge who penned the decision. Thus, not having heard the testimonies himself, the trial judge or the appellate court would not be in a better position than this Court to assess the credibility of witnesses on the basis of their demeanor.

After a careful and close examination of the records and evidence presented by the parties, the Court find that respondents failed to successfully prove by preponderance of evidence that respondent Jesusa made an initial deposit of P200,000.00 in her Express Teller account.

Respondent Jesusa and her daughter Joan testified that at the outset, respondent Jesusa told Capati that she was opening an Express Teller account for P200,000.00; that she was going to withdraw and transfer P100,000.00 from her savings account to her new account, and that she had an additional P100,000.00 cash. However, these assertions are not borne out by the other evidence presented. Notably, it is not refuted that Capati prepared a withdrawal slip for P200,000.00. This is contrary to the claim of respondent Jesusa that she instructed Capati to make a fund transfer of only P100,000.00 from her savings account to the Express Teller account she was opening. Yet, respondent Jesusa signed the withdrawal slip. The Court finds it strange that she would sign the withdrawal slip if her intention in the first place was to withdraw only P100,000.00 from her savings account and deposit P100,000.00 in cash with her.

Moreover, respondent Jesusa's claim that she signed the withdrawal slip without looking at the amount indicated therein fails to convince us, for respondent Jesusa, as a businesswoman in the regular course of business and taking ordinary care of her concerns, would make sure that she would check the amount written on the withdrawal slip before affixing her signature. Significantly, the Court noted that the space provided for her signature is very near the space where the amount of P200,000.00 in words and figures are written; thus, she could not have failed to notice that the amount of P200,000.00 was written instead of P100,000.00.

The fact that respondent Jesusa initially intended to transfer the amount of P200,000.00 from her savings account to her new Express Teller account was further established by the teller's tape presented as petitioner's evidence and by the testimony of Emerenciana Torneros, the teller who had attended to respondent Jesusa's transactions.

The teller's tape definitely establishes the fact of respondent Jesusa's original intention to withdraw the amount of P200,000.00, and not P100,000.00 as she claims, from her savings account, to be transferred as her initial deposit to her new Express Teller account, the insufficiency of her balance in her savings account, and finally the fund transfer of the amount of P100,000.00 from her savings account to her new Express Teller account. The Court gave great evidentiary weight to the teller's tape, considering that it is inserted into the bank's computer terminal, which records the teller's daily transactions in the ordinary course of business, and there is no showing that the same had been purposely manipulated to prove petitioner's claim.

While the fact that the alteration in the original deposit slip was signed by Capati and not by respondent Jesusa herself was a violation of the bank's policy requiring the depositor to sign the correction, nevertheless, the Court finds that respondents failed to satisfactorily establish by preponderance of evidence that indeed there was an additional cash of P100,000.00 deposited to the new Express Teller account.

Physical evidence is a mute but eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence. The Court had, on many occasions, relied principally upon physical evidence in ascertaining the truth. Where the physical evidence on record runs counter to the testimonial evidence of the prosecution witnesses, the Court consistently rule that the physical evidence should prevail.

PEOPLE OF THE PHILIPPINES*, plaintiff-appellee,* vs. JOSE ENCARNACION MALIMIT *alias* "MANOLO", *accused-appellant.*
G.R. No. 109775, THIRD DIVISION, November 14, 1996, FRANCISCO, *J.*

Nevertheless, these constitutional short-cuts do not affect the admissibility of Malaki's wallet, identification card, residence certificate and keys for the purpose of establishing other facts relevant to the crime. Thus, the wallet is admissible to establish the fact that it was the very wallet taken from Malaki on the night of the robbery. The identification card, residence certificate and keys found inside the wallet, on the other hand, are admissible to prove that the wallet really belongs to Malaki.

FACTS:

Appellant Jose Encarnacion Malimit, charged with and convicted of the special complex crime of robbery with homicide, was meted by the trial court the penalty of *reclusion perpetua*. He was also ordered to indemnify the heirs of Onofre Malaki the sum of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the cost.

On April 15, 1991, around 8:00 o'clock in the evening, [Onofre] Malaki was attending to his store. Malaki's houseboy Edilberto Batin, on the other hand, was busy cooking chicken for supper at the kitchen located at the back of the store.

Soon thereafter, Florencio Rondon, a farmer, arrived at the store of Malaki. Rondon was to purchase chemical for his rice farm. Rondon came from his house, approximately 150 meters distant from Malaki's store.

Meanwhile, Batin had just finished cooking and from the kitchen, he proceeded directly to the store to ask his employer (Malaki) if supper is to be prepared. As Batin stepped inside the store, he was taken aback when he saw appellant coming out of the store with a bolo, while his boss, bathed in his own blood, was sprawled on the floor "struggling for his life" (hovering between life and death).

Rondon, who was outside and barely 5 meters away from the store, also saw appellant Jose Malimit (or "Manolo") rushing out through the front door of Malaki's store with a blood-stained bolo. Aided by the illumination coming from a pressure lamp ("petromax") inside the store, Rondon clearly recognized Malimit.

Batin immediately went out of the store to seek help. Outside the store, he met Rondon. After a brief conversation, both Batin and Rondon rushed to the nearby house of Malaki's brother-in-law Eutiquio Beloy and informed Beloy of the tragic incident which befell Malaki. Batin, along with Beloy, went back to the store. Inside, they saw the lifeless body of Malaki in a pool of blood lying prostrate at the floor. Beloy readily noticed that the store's drawer was opened and ransacked and the wallet of Malaki was missing from his pocket.

ISSUE:

Whether or not the admission as evidence of Malaki's wallet together with its contents, *viz*., (1) Malaki's residence certificate; (2) his identification card; and (3) bunch of keys, violates his right against self-incrimination.

RULING:

NO. The admission as evidence of Malaki's wallet together with its contents, *viz*., (1) Malaki's residence certificate; (2) his identification card; and (3) bunch of keys, does not violate his right against self-incrimination.

The right against self-incrimination guaranteed under our fundamental law finds no application in this case. This right, as put by Mr. Justice Holmes in *Holt vs*. *United States*, ". . . is a prohibition of the use of physical or moral compulsion, to extort communications from him . . ." It *is simply a prohibition against legal process to extract from the* [accused]'s *own lips, against his will, admission of his guilt*. It does not apply to the instant case where the evidence sought to be excluded is not an incriminating statement but an *object* evidence. Wigmore, discussing the question now before us in his treatise on evidence, thus, said:

If, in other words (the rule) created inviolability not only for his [physical control of his] own vocal utterances, but also for his physical control in whatever form exercise, then, it would be possible for a guilty person to shut himself up in his house, with all the tools and indicia of his crime, and defy the authority of the law to employ in evidence anything that might be obtained by forcibly overthrowing his possession and compelling the surrender of the evidential articles — a clear *reduction ad absurdum*. In other words, it is not merely compulsion that is the kernel of the privilege, . . . but *testimonial compulsion.*

The admissibility of other evidence, provided they are relevant to the issue and is not otherwise excluded by law or rules, is not affected even if obtained or taken in the course of custodial investigation. Concededly, appellant was not informed of his right to remain silent and to have his own counsel by the investigating policemen during the custodial investigation. Neither did he execute a written waiver of these rights in accordance with the constitutional prescriptions. Nevertheless, these constitutional short-cuts do not affect the admissibility of Malaki's wallet, identification card, residence certificate and keys for the purpose of establishing other facts relevant to the crime. Thus, the wallet is admissible to establish the fact that it was the very wallet taken from Malaki on the night of the robbery. The identification card, residence certificate and keys found inside the wallet, on the other hand, are admissible to prove that the wallet really belongs to Malaki. Furthermore, even assuming arguendo that these pieces of evidence are inadmissible, the same will not detract from appellant's culpability considering the existence of other evidence and circumstances establishing appellant's identity and guilt as perpetrator of the crime charged.

Appellant's insistence that he merely found Malaki's wallet by chance while gathering shells along the seashore, and that he feared being implicated in the crime for which reason he hid the wallet underneath a stone, hardly inspires belief. The Court is at a loss, just as the trial court was, as to why appellant should fear being implicated in the crime if indeed he merely found Malaki's wallet by chance. No inference can be drawn from appellant's purported apprehension other than the logical conclusion that appellant had knowledge of the crime. Besides, proof that appellant is in possession of a stolen property gives rise to a valid presumption that he stole the same.

In fine, as the killing of Malaki took place on the occasion of robbery, appellant was correctly convicted of the special complex crime of robbery with homicide, defined and penalized under Article 294, paragraph 1 of the Revised Penal Code.

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. RUDY BUDUHAN y BULLAN and ROBERT BUDUHAN y BULLAN, *defendants-appellants*.
G.R. No. 178196, THIRD DIVISION, August 6, 2008, CHICO-NAZARIO, *J.*:

Paraffin test results are merely corroborative of the major evidence offered by any party, and they are not conclusive with respect to the issue of whether or not the subjects did indeed fire a gun. As previously mentioned, the positive and negative results of the paraffin test can also be influenced by certain factors affecting the conditions surrounding the use of the firearm, namely: the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.

FACTS:

On 26 August 1998, an Information was filed against Robert Buduhan, Rudy Buduhan, Boy Guinhicna, Boyet Ginyang and 3 John Does before the RTC of Maddela, Quirino, for the crime of Robbery with Homicide and Frustrated Homicide.

That on or about 10:40 o'clock in the evening of July 24, 1998 in Poblacion Norte, Municipality of Maddela, Province of Quirino, four of them are armed and after first conspiring, confederating and mutually helping one another and with force and violence did then and there willfully, unlawfully

and feloniously rob ROMUALDE ALMERON of his wallet and wrist watch and LARRY ERESE of his wrist watch to the damage and prejudice of the said ROMUALDE ALMERON and LARRY ERESE;

That on the occasion of the Robbery, the said accused, armed with firearms of different caliber and after first conspiring, confederating and mutually helping one another did then and there willfully, unlawfully and feloniously, shoot and fire upon ROMUALDE ALMERON, LARRY ERESE and ORLANDO PASCUA resulting to their instanteneous (sic) death and the injuries to the persons of FERNANDO PERA and GILBERT CORTEZ.

On 20 October 1998, the accused filed a Motion to Quash the above information, alleging that the court did not legally acquire jurisdiction over their persons. The accused contended they were neither caught in flagrante delicto, nor did the police have personal knowledge of the commission of the offense at the time when their warrantless arrests were effected.

Police Inspector Maria Leonora Chua-Camarao testified that she was the one who conducted the examination proper of the paraffin casts taken from Robert Buduhan, Rudy Buduhan, Boyet Ginyang and Boy Guinhicna. She likewise brought before the trial court the original Letter Request of the Maddela Police Station for the conduct of paraffin casting; the Letter of Request addressed to the Officer-in-Charge the PNP Crime Laboratory in Region 2 for the conduct of paraffin examination; and the paraffin casts of subjects Rudy, Ginyang, Guinhicna and Robert. Police Inspector Chua-Camarao explained that the purpose of conducting a paraffin test was to determine the presence of gunpowder residue in the hands of a person through extraction using paraffin wax. The process involves two stages: first, the paraffin casting, in which the hands of the subject are covered with paraffin wax to extract gunpowder residue; and second, the paraffin examination per se, which refers to the actual chemical examination to determine whether or not gunpowder residue has indeed been extracted. For the second stage, the method used is the diphenyl amine test, wherein the diphenyl amine agent is poured on the paraffin casts of the subject's hands. In this test, a positive result occurs when blue specks are produced in the paraffin casts, which then indicates the presence of gunpowder residue. When no such reaction takes place, the result is negative.

The findings and conclusion on the paraffin test that Police Inspector Chua-Camarao conducted were contained in Physical Science Report which yielded a negative result for all the four accused. Nonetheless, the forensic chemist pointed out that the paraffin test is merely a corroborative evidence, neither proving nor disproving that a person did indeed fire a gun. The positive or negative results of the test can be influenced by certain factors, such as the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.

ISSUE:

Whether or not their guilt was proven beyond reasonable doubt in view of the Court's appreciation of the evidence for and against them.

RULING:

YES, guilt was proven beyond reasonable doubt.

After a careful review of the entire records of this case, the Court finds no reason to disagree with the factual findings of the trial court that all the elements of the crime of Robbery with Homicide were present and proved in this case.

To warrant conviction for the crime of robbery with homicide, one that is primarily classified as a crime against property and not against persons, the prosecution has to firmly establish the following elements: (1) the taking of personal property with the use of violence or intimidation against the person; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, is committed.

In Robbery with Homicide, so long as the intention of the felon is to rob, the killing may occur before, during or after the robbery. It is immaterial that death would supervene by mere accident, or that the victim of homicide is other than the victim of robbery, or that two or more persons are killed. Once a homicide is committed by reason or on the occasion of the robbery, the felony committed is the special complex crime of Robbery with Homicide.

The original design must have been robbery; and the homicide, even if it precedes or is subsequent to the robbery, must have a direct relation to, or must be perpetrated with a view to consummate, the robbery. The taking of the property should not be merely an afterthought, which arose subsequently to the killing.

Likewise, the intent to gain may already be presumed in this case. *Animus lucrandi* or intent to gain is an internal act, which can be established through the overt acts of the offender. The unlawful act of the taking of Larry's watch at gunpoint after the declaration of a hold-up already speaks well enough for itself. No other intent may be gleaned from the acts of the appellant's group at that moment other than to divest Larry of his personal property.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient.

As the fatal shooting of both Larry Erese and Romualde Almeron happened on the occasion of the robbery and was subsequent thereto, both of the appellants must be held liable for the crime of Robbery with Homicide on two counts.

The defense of appellants of alibi is at best weak when faced with the positive identification of the appellants by the prosecution's principal witness. It is elemental that for alibi to prosper, the requirements of time and place must be strictly met. This means that the accused must not only prove his presence at another place at the time of the commission of the offense but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time. In the present case, there was absolutely no claim of any fact that would show that it was well nigh impossible for appellants to be present at the *locus criminis*. In fact, they all testified that they were going towards the vicinity of the area of the shooting incident when the police apprehended them.

Appellants likewise cannot rely on the negative findings of Police Inspector Chua-Camarao on the paraffin tests conducted in order to exculpate themselves. The said witness herself promptly stated that paraffin test results are merely corroborative of the major evidence offered by any party, and they are not conclusive with respect to the issue of whether or not the subjects did indeed fire a gun. As previously mentioned, the positive and negative results of the paraffin test can also be influenced by certain factors affecting the conditions surrounding the use of the firearm, namely: the wearing of gloves by the subject, perspiration of the hands, wind direction, wind velocity, humidity, climate conditions, the length of the barrel of the firearm or the open or closed trigger guard of the firearm.

PEOPLE OF THE PHILIPPINES*, appellee*, vs. SPO1 VIRGILIO G. BRECINIO, *appellant.*
G.R. No. 138534, THIRD DIVISION, March 17, 2004, CORONA, *J.:*

Likewise, while the paraffin test was negative, such fact alone did not ipso facto prove that the appellant was innocent. Time and again, the Court has held that a negative paraffin result is not conclusive proof that a person has not fired a gun. Stated otherwise, it is possible to fire a gun and yet be negative for nitrates, as when the culprit is wearing gloves or he washes his hands afterwards.

FACTS:

Appellant Brecinio was originally charged with homicide thru reckless imprudence in the Municipal Trial Court of Pagsanjan, Laguna by the PNP Chief of Police of Pagsanjan, Laguna. However, upon intervention of the National Bureau of Investigation (NBI) and after a re-investigation conducted by the Office of the Laguna Provincial Prosecutor, the charge against the appellant was upgraded to murder:

That on the 30th day of June 1996, more or less 6:00 o'clock in the evening, inside the Municipal Jail, Municipality of Pagsanjan, Province of Laguna, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, while conveniently armed with a service firearm Colt Caliber .45, did then and there willfully, unlawfully and feloniously shoot ALBERTO PAGTANANAN, a jail inmate, who was then caught unaware and was hit on the upper quadrant medical clavicular line, resulting in his instantaneous death, to the damage and prejudice of his surviving heirs.

That the crime was committed with the qualifying circumstances of treachery and evident premeditation.

Robinson Arbilo testified that, at around 5:00 p.m., on June 30, 1996, he was with inmates Sammy Bolanos, Rafael Morales, Edwin Maceda, Filomeno Mapalad, Jr. and victim Alberto Pagtananan inside the Pagsanjan municipal jail, cell no. 1, when appellant SPO1 Virgilio Brecinio, who was drunk, arrived. Appellant entered their cell and asked for their names, and the reasons for their detention. After answering, each of them received a blow in the stomach from the appellant for no apparent reason. Thereafter, appellant ordered them to bring out all their belongings from their cell. While doing so, they were hit with whatever object the former could get hold of.

Appellant proceeded to the comfort room and, as he emerged therefrom, he saw the victim Alberto Pagtananan also coming out. Appellant confronted the victim and asked him where he came from. The victim answered that he had just urinated. Apparently not believing him, appellant accused the victim of "hiding" and "making a fool of him." The victim innocently replied "*hindi naman po.*" Irritated by the answer, appellant berated the victim and when the latter looked at him, he asked,

"*Ba't ang sama mong tumingin?*" The victim did not reply. Appellant punched the victim in the stomach but still the latter said nothing.

Appellant pulled out his .45 caliber pistol tucked on his right waist and fired it twice in succession. The first shot was directed upward; the second downward. The inmates inside the cell were all cowering in fear and were huddled together in one corner of the bed, covering their ears. Witness Arbilo who was merely one-and-a-half meters in front of the appellant then saw the latter aim his gun at the victim and fire the third shot, hitting the victim in the stomach. Seeing the victim lying prostrate on the ground, the inmates lifted and laid him on the bed. At that juncture, appellant, who was standing in front of the inmates, reholstered his gun on his waist and ordered them to get water for the victim. SPO1 Bayani Montessur then arrived and ordered the victim to be brought to a nearby hospital but the latter was declared dead on arrival.

Contrary to the prosecution's version, appellant claimed that the shooting was accidental. He declared that he had just gone out of the comfort room and was about to tuck his .45 caliber pistol in its holster on his waist when he slipped on the wet floor, causing the gun to drop and fire. After picking up the gun, Eric Garcia, an inmate, called his attention to the fact that one of the inmates had been hit. He immediately went to the detention cell and saw the victim, Alberto Pagtananan, lying down with a wound in his stomach. He called Filomeno Mapalad Jr. and ordered him to bring the victim to the hospital. He was not able to go with the group as he was immediately placed under arrest.

NBI forensic chemist Emilia Andro-Rosaldes was also presented by the defense to testify on the result of the paraffin examination conducted on the appellant on July 2, 1996, two days after the alleged shooting incident. She testified that it was Mrs. Gemma Orbeta who made the paraffin cast on the appellant and her only participation was the examination of the paraffin cast taken from the appellant. According to her, there are four factors that can affect the presence of gun powder residue in the hands of a person who fires a gun, namely, the length of the barrel of the gun, the wind velocity, the direction of the shot(s) and the type and caliber of ammunition. She also declared that the application of paraffin wax to make the paraffin cast can remove gunpowder residue. She did not know whether paraffin wax had been applied on the hands of the appellant before the paraffin cast was made.

ISSUE:

Whether or not the court erred in convicting him of murder and that, if an offense was indeed committed, it was only reckless imprudence resulting in homicide.

RULING:

NO, the conviction was correct.

The appellant, in an attempt to impugn the credibility of prosecution witness Filomeno Mapalad, Jr., harps on the latter's recantation of his affidavit supporting the defense's "accident" theory.

The Court finds that Mapalad's recantation was satisfactorily explained. He testified that he was threatened by the appellant. As a detainee, he was completely vulnerable to the threats of the appellant, a police officer and presumably his jailer. He therefore signed the said affidavit (supporting appellant's "accident" version) as he was ordered to do. However, immediately after his release from

detention, he went to the NBI and narrated what really transpired. He stood firm in his testimony about the direct involvement of the appellant.

In this connection, the defense never showed that Mapalad was motivated by any ill-motive in implicating the appellant in the crime. When there is no evidence of improper motive on the part of the prosecution witness to testify falsely against an accused or implicate him in the commission of a crime, the logical conclusion is that no such improper motive exists and the testimony is worthy of full faith and credence.

Likewise, while the paraffin test was negative, such fact alone did not *ipso facto* prove that the appellant was innocent. Time and again, the Court has held that a negative paraffin result is not conclusive proof that a person has not fired a gun. Stated otherwise, it is possible to fire a gun and yet be negative for nitrates, as when the culprit is wearing gloves or he washes his hands afterwards. Since appellant submitted himself for paraffin testing only two days after the shooting, it was likely he had already washed his hands thoroughly, thus removing all traces of nitrates therefrom.

The trial court correctly appreciated the presence of treachery which qualified the offense to murder. For treachery to be considered, the accused must have deliberately and consciously adopted a means of execution that rendered the person attacked with no opportunity to defend himself or to retaliate. As described by the prosecution, the victim and his co-detainees were inside the cell when appellant, who was drunk, manhandled them and suddenly fired three successive shots. It was the third shot that killed the victim. The testimonies of the two eyewitnesses, co-inmates of the victim, showed that the suddenness and mode of attack adopted by the appellant placed not only the victim but also all of them in such a situation where it was not possible for them to resist the attack or defend themselves. Even frontal attack can be treacherous when unexpected and the unarmed victim is in no position to repel the attack or avoid it.

ROMEO SISON, NILO PACADAR, JOEL TAN, RICHARD DE LOS SANTOS, and JOSELITO TAMAYO, *petitioners,* vs. PEOPLE OF THE PHILIPPINES and COURT OF APPEALS, *respondents.* G.R. Nos. 108280-83 & 114931-33, SECOND DIVISION, November 16, 1995, PUNO, *J.:*

The rule in this jurisdiction is that photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced. The value of this kind of evidence lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time of the crime. The photographer, however, is not the only witness who can identify the pictures he has taken. The correctness of the photograph as a faithful representation of the object portrayed can be proved prima facie, either by the testimony of the person who made it or by other competent witnesses, after which the court can admit it subject to impeachment as to its accuracy. Photographs, therefore, can be identified by the photographer or by any other competent witness who can testify to its exactness and accuracy.

FACTS:

From August to October 1986, several informations were filed in court against eleven persons identified as Marcos loyalists charging them with the murder of Salcedo. The cases were consolidated. All of the accused pleaded not guilty to the charge and trial ensued accordingly. The prosecution presented twelve witnesses, including two eyewitnesses, Ranulfo Sumilang and Renato

Banculo, and the police officers who were at the Luneta at the time of the incident. In support of their testimonies, the prosecution likewise presented documentary evidence consisting of newspaper accounts of the incident and various photographs taken during the mauling.

The prosecution established that on July 27, 1986, a rally was scheduled to be held at the Luneta by the Marcos loyalists. Earlier, they applied for a permit to hold the rally but their application was denied by the authorities. Despite this setback, three thousand of them gathered at the Rizal Monument of the Luneta at 2:30 in the afternoon of the scheduled day. Led by Oliver Lozano and Benjamin Nuega, both members of the Integrated Bar of the Philippines, the loyalists started an impromptu singing contest, recited prayers and delivered speeches in between. Colonel Edgar Dula Torres, then Deputy Superintendent of the Western Police District, arrived and asked the leaders for their permit. No permit could be produced. Colonel Dula Torres thereupon gave them ten minutes to disperse. The loyalist leaders asked for thirty minutes but this was refused. The police then pushed the crowd, and used tear gas and truncheons to disperse them. The loyalists scampered away but some of them fought back and threw stones at the police. Eventually, the crowd fled towards Maria Orosa Street and the situation later stabilized.

At about 4:00 p.m., a small group of loyalists converged at the Chinese Garden, Phase III of the Luneta. There, they saw Annie Ferrer, a popular movie starlet and supporter of President Marcos, jogging around the fountain. They approached her and informed her of their dispersal and Annie Ferrer angrily ordered them. Then she continued jogging around the fountain chanting. The loyalists replied. A few minutes later, Annie Ferrer was arrested by the police. Somebody then shouted "Kailangang gumanti, tayo ngayon!" A commotion ensued and Renato Banculo, a cigarette vendor, saw the loyalists attacking persons in yellow, the color of the "Coryistas." Renato took off his yellow shirt. He then saw a man wearing a yellow t-shirt being chased by a group of persons. The man in the yellow t-shirt was Salcedo and his pursuers appeared to be Marcos loyalists. They caught Salcedo and boxed and kicked and mauled him. Salcedo tried to extricate himself from the group but they again pounced on him and pummelled him with fist blows and kicks hitting him on various parts of his body. Banculo saw Ranulfo Sumilang, an electrician at the Luneta, rush to Salcedo's aid. Sumilang tried to pacify the maulers so he could extricate Salcedo from them. But the maulers pursued Salcedo unrelentingly, boxing him with stones in their fists. Somebody gave Sumilang a loyalist tag which Sumilang showed to Salcedo's attackers. They backed off for a while and Sumilang was able to tow Salcedo away from them. But accused Raul Billosos emerged from behind Sumilang as another man boxed Salcedo on the head. Accused Richard de los Santos also boxed Salcedo twice on the head and kicked him even as he was already fallen. Salcedo tried to stand but accused Joel Tan boxed him on the left side of his head and ear. Accused Nilo Pacadar punched Salcedo on his nape. Sumilang tried to pacify Pacadar but the latter lunged at the victim again. Accused Joselito Tamayo boxed Salcedo on the left jaw and kicked him as he once more fell. Banculo saw accused Romeo Sison trip Salcedo and kick him on the head, and when he tried to stand, Sison repeatedly boxed him. Sumilang saw accused Gerry Neri approach the victim but did not notice what he did.

Salcedo somehow managed to get away from his attackers and wipe off the blood from his face. He sat on some cement steps and then tried to flee towards Roxas boulevard to the sanctuary of the Rizal Monument but accused Joel Tan and Nilo Pacadar pursued him, mauling Sumilang in the process. Salcedo pleaded for his life.

The mauling resumed at the Rizal Monument and continued along Roxas Boulevard until Salcedo collapsed and lost consciousness. Sumilang flagged down a van and with the help of a traffic officer,

brought Salcedo to the Medical Center Manila but he was refused admission. So they took him to the Philippine General Hospital where he died upon arrival.

Salcedo died of "hemorrhage, intracranial traumatic." He sustained various contusions, abrasions, lacerated wounds and skull fractures.

The mauling of Salcedo was witnessed by bystanders and several press people, both local and foreign. The press took pictures and a video of the event which became front-page news the following day, capturing national and international attention. This prompted President Aquino to order the Capital Regional Command and the Western Police District to investigate the incident.

For their defense, the principal accused denied their participation in the mauling of the victim and offered their respective alibis. Accused Joselito Tamayo testified that he was not in any of the photographs presented by the prosecution because he was in his house in Quezon City. Gerry Neri claimed that he was at the Luneta Theater at the time of the incident. Romeo Sison, a commercial photographer, was allegedly at his office near the Luneta waiting for some pictures to be developed at that time. He claimed to be afflicted with hernia impairing his mobility; he cannot run normally nor do things forcefully. Richard de los Santos admits he was at the Luneta at the time of the mauling but denies hitting Salcedo. He said that he merely watched the mauling which explains why his face appeared in some of the photographs. Unlike the other accused, Nilo Pacadar admits that he is a Marcos loyalist and a member of the Ako'y Pilipino Movement and that he attended the rally on that fateful day. According to him, he saw Salcedo being mauled and like Richard de los Santos, merely viewed the incident. His face was in the pictures because he shouted to the maulers to stop hitting Salcedo. Joel Tan also testified that he tried to pacify the maulers because he pitied Salcedo. The maulers however ignored him.

ISSUE:

Whether or not the photographs taken by the victim are admissible as evidence for lack of proper identification by the person or persons who took the same.

RULING:

YES. The photographs taken by the victim are admissible as evidence.

Photographs taken of the victim as he was being mauled at the Luneta — starting from a grassy portion to the pavement at the Rizal Monument and along Roxas Boulevard, — as he was being chased by his assailants and as he sat pleading with his assailants. Photographs of Salcedo and the mauling published in local newspapers and magazines such as the Philippine Star, Mr. and Ms. Magazine, Philippine Daily Inquirer, and the Malaya.

The rule in this jurisdiction is that photographs, when presented in evidence, must be identified by the photographer as to its production and testified as to the circumstances under which they were produced. The value of this kind of evidence lies in its being a correct representation or reproduction of the original, and its admissibility is determined by its accuracy in portraying the scene at the time of the crime. The photographer, however, is not the only witness who can identify the pictures he has taken. The correctness of the photograph as a faithful representation of the object portrayed can be proved *prima facie*, either by the testimony of the person who made it or by other competent witnesses, after which the court can admit it subject to impeachment as to its accuracy. Photographs,

therefore, can be identified by the photographer or by any other competent witness who can testify to its exactness and accuracy.

This court notes that when the prosecution offered the photographs as part of its evidence, appellants, through counsel Atty. Alfredo Lazaro, Jr. objected to their admissibility for lack of proper identification. However, when the accused presented their evidence, Atty. Winlove Dumayas, counsel for accused Joselito Tamayo and Gerry Neri used such Exhibits to prove that his clients were not in any of the pictures and therefore could not have participated in the mauling of the victim. The photographs were adopted by appellant Joselito Tamayo and accused Gerry Neri as part of the defense exhibits. And at this hearing, Atty. Dumayas represented all the other accused per understanding with their respective counsels, including Atty. Lazaro, who were absent. At subsequent hearings, the prosecution used the photographs to cross-examine all the accused who took the witness stand. No objection was made by counsel for any of the accused, not until Atty. Lazaro appeared at the third hearing and interposed a continuing objection to their admissibility.

The objection of Atty. Lazaro to the admissibility of the photographs is anchored on the fact that the person who took the same was not presented to identify them. We rule that the use of these photographs by some of the accused to show their alleged non-participation in the crime is an admission of the exactness and accuracy thereof. That the photographs are faithful representations of the mauling incident was affirmed when appellants Richard de los Santos, Nilo Pacadar and Joel Tan identified themselves therein and gave reasons for their presence thereat.

An analysis of the photographs *vis-a-vis* the accused's testimonies reveal that only three of the appellants, namely, Richard de los Santos, Nilo Pacadar and Joel Tan could be readily seen in various belligerent poses lunging or hovering behind or over the victim. Appellant Romeo Sison appears only once and he, although afflicted with hernia is shown merely running after the victim. Appellant Joselito Tamayo was not identified in any of the pictures. The absence of the two appellants in the photographs does not exculpate them. The photographs did not capture the entire sequence of the killing of Salcedo but only segments thereof. While the pictures did not record Sison and Tamayo hitting Salcedo, they were unequivocally identified by Sumilang and Banculo Appellants' denials and alibis cannot overcome their eyeball identification.

ARMANDO JOSE y PAZ and MANILA CENTRAL BUS LINES (MCL), represented by its General Manager MR. DANILO T. DE DIOS, *petitioners*, vs. COURT OF APPEALS, ROMMEL ABRAHAM, represented by his father FELIXBERTO ABRAHAM, JOSE MACARUBO and MERCEDES MACARUBO, *respondents.*
G.R. Nos. 118441-42, SECOND DIVISION, January 18, 2000, MENDOZA, *J.*

Physical evidence is a mute but an eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence.

FACTS:

Petitioner Manila Central Bus Lines Corporation (MCL) is the operator-lessee of a public utility bus (hereafter referred to as Bus 203), owned by the Metro Manila Transit Corporation and is insured with the Government Service Insurance System.

On February 22, 1985, at around six o'clock in the morning, Bus 203, then driven by petitioner Armando Jose, collided with a red Ford Escort driven by John Macarubo on MacArthur Highway, in

Marulas, Valenzuela, Metro Manila. Bus 203 was bound for Muntinlupa, Rizal, while the Ford Escort was headed towards Malanday, Valenzuela on the opposite lane. As a result of the collision, the left side of the Ford Escort's hood was severely damaged while its driver, John Macarubo, and its lone passenger, private respondent Rommel Abraham, were seriously injured. The driver and conductress of Bus 203 rushed Macarubo and Abraham to the nearby Fatima Hospital where Macarubo lapsed into a coma. Despite surgery, Macarubo failed to recover and died five days later. Abraham survived, but he became blind on the left eye which had to be removed. In addition, he sustained a fracture on the forehead and multiple lacerations on the face, which caused him to be hospitalized for a week.

On March 26, 1985, Rommel Abraham, represented by his father, Felixberto, instituted Civil Case for damages against petitioners MCL and Armando Jose.

On July 17, 1986, the spouses Jose and Mercedes Macarubo, parents of the deceased John Macarubo, filed their own suit for damages in the same trial court against MCL alone. On the other hand, MCL filed a third-party complaint against Juanita Macarubo, registered owner of the Ford Escort on the theory that John Macarubo was negligent and that he was the "authorized driver" of Juanita Macarubo. The latter, in turn, filed a counterclaim for damages against MCL for the damage to her car. The cases were consolidated and later tried jointly.

ISSUE:

Whether or not the photographs taken are admissible as evidence.

RULING:

YES, The photographs taken by the victim are admissible as evidence.

It is well-settled that a question of fact is to be determined by the evidence offered to support the particular contention. In the proceedings below, petitioners relied mainly on photographs showing the position of the two vehicles after the collision. On the other hand, private respondents offered the testimony of Rommel Abraham to the effect that the collision took place because Bus 203 invaded their lane.

The trial court was justified in relying on the photographs rather than on Rommel Abraham's testimony which was obviously biased and unsupported by any other evidence. Physical evidence is a mute but an eloquent manifestation of truth, and it ranks high in our hierarchy of trustworthy evidence. In criminal cases such as murder or rape where the accused stands to lose his liberty if found guilty, this Court has, in many occasions, relied principally upon physical evidence in ascertaining the truth. In *People v*. *Vasquez*, where the physical evidence on record ran counter to the testimonial evidence of the prosecution witnesses, we ruled that the physical evidence should prevail.

In this case, the positions of the two vehicles, as shown in the photographs taken by MCL line inspector Jesus Custodio about an hour and fifteen minutes after the collision, disputes Abraham's self-serving testimony that the two vehicles collided because Bus 203 invaded the lane of the Ford Escort and clearly shows that the case is exactly the opposite of what he claimed happened. Contrary to Abraham's testimony, the photographs show quite clearly that Bus 203 was in its proper lane and that it was the Ford Escort which usurped a portion of the opposite lane. The three photographs show the Ford Escort positioned diagonally on the highway, with its two front wheels occupying Bus 203's

lane. As shown by the photograph, the portion of MacArthur Highway where the collision took place is marked by a groove which serves as the center line separating the right from the left lanes. The photograph shows that the left side of Bus 203 is about a few feet from the center line and that the bus is positioned parallel thereto. This negates the claim that Bus 203 was overtaking another vehicle and, in so doing, encroached on the opposite lane occupied by the Ford Escort.

Indeed, Bus 203 could not have been overtaking another vehicle when the collision happened. It was filled with passengers, and it was considerably heavier and larger than the Ford Escort. If it was overtaking another vehicle, it necessarily had to accelerate. The acceleration of its speed and its heavy load would have greatly increased its momentum so that the impact of the collision would have thrown the smaller and lighter Ford Escort to a considerable distance from the point of impact. Exhibit 1, however, shows that the Ford Escort's smashed hood was only about one or two meters from Bus 203's damaged left front. If there had been a great impact, such as would be the case if Bus 203 had been running at a high speed, the two vehicles should have ended up far from each other.

PEOPLE OF THE PHILIPPINES, *Appellee*, vs. ANITA MIRANDA y BELTRAN, *Appellant*.
G.R. No. 205639, THIRD DIVISION, January 18, 2016, PERALTA, *J.*

It is material in every prosecution for the illegal sale of a prohibited drug that the drug, which is the corpus delicti, be presented as evidence in court. Hence, the identity of the prohibited drug must be established without any doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

FACTS:

The prosecution's evidence established that after a surveillance conducted outside appellant's house located in Barangay Ibaba West, Calapan City, it was confirmed that she was engaged in the illegal sale of shabu. Thus, at 12:00 noon of May 6, 2005, the police formed a buy-bust team designating PO2 Mariel D. Rodil (*PO2 Rodil*) to act as the poseur-buyer, SPO1 Noel Buhay (*SPO1 Buhay*) and PO2 Ritchie Chan (*PO2 Chan*) as the arresting officers and the other team members as back up. Marked and given to PO2 Rodil were four (4) one hundred peso bills. At 2:00 p.m., the buy-bust team arrived in Barangay Ibaba West and PO2 Rodil proceeded to appellant's house, while the rest of the team hid somewhere near appellant's house. PO2 Rodil saw appellant outside her house and after a brief conversation, told her that she was buying shabu worth P400.00. Appellant then went inside her house and upon her return, handed to PO2 Rodil one (1) transparent plastic sachet containing white crystalline substance. After PO2 Rodil gave appellant the marked money as payment, she then made a missed call to PO2 Chan's cell phone as a pre-arranged signal. SPO1 Buhay and PO2 Chan effected appellant's arrest. PO2 Chan got the marked money from appellant, while PO2 Rodil held on to the plastic sachet containing white crystalline substance. The team then informed Arnel Almazan, Barangay Councilor of Barangay Ibaba West, about the operation and they all brought appellant to the Calapan Police Station.

Both the inventory of the seized item and the taking of appellant's photos were made at the police station. PO2 Rodil marked the seized item and submitted the same for laboratory examination on the same day. The Forensic Chemist, Police Inspector Rhea Fe DC Alviar (*PI Alviar*) confirmed the specimen submitted positive for methamphetamine hydrochloride (*shabu*).

Appellant denied selling illegal drugs saying that at 2:00 p.m. of May 6, 2005, she was at home watching TV when the police officers entered her house, frisked her and searched her house. She was later brought to the Calapan Police Station where she was asked to point to the shabu placed on top of a table; and that she was also subjected to a drug test.

ISSUE:

Whether or not the prosecution evidence showed full compliance with Section 21(1) of Republic Act (*RA*) 9165 on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs.

RULING:

YES. Section 21(1) of Republic Act (*RA*) 9165 on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs was complied.

It is material in every prosecution for the illegal sale of a prohibited drug that the drug, which is the *corpus delicti*, be presented as evidence in court. Hence, the identity of the prohibited drug must be established without any doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

Chain of custody, as defined under Section 1(b) of Dangerous Drugs Board Regulation No. 1, series of 2002, which implements RA 9165, states:

Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In this case, the Court finds that the prosecution was able to establish the crucial links in the chain of custody of the seized sachet of shabu. After PO2 Rodil received the plastic sachet of white crystalline substance from appellant, she was in possession of the shabu up to the time appellant was brought to the police station for investigation. With the buy-bust team and appellant at the police station were the Kill Droga Provincial President, Nicanor Ocampo, Sr. and Barangay Councilor Almazan. PO2 Rodil made an inventory of the seized item which was attested by Ocampo. She also marked the seized item with her initials "MDR". Appellant's photos were also taken pointing to the plastic sachet.

PO2 Rodil prepared and signed the request for laboratory examination and brought the letter request and the seized item to the Regional Crime Laboratory Office-4B Mimiropa, Suqui, Calapan City for qualitative analysis. The specimen was received at the laboratory at 5:00 p.m. of the same day. PI Alviar examined the white crystalline substance contained in a heat-sealed plastic transparent plastic sachet with marking "MDR" on the same right and issued Chemistry Report wherein she stated that the specimen was tested positive for methamphetamine hydrochloride (shabu). The staple-sealed brown envelope with markings PI Alviar's initials, which contained one rectangular transparent

plastic sachet sealed with masking tape with the same marking, was offered in evidence and identified in court by PI Alviar.

There is no doubt that the sachet of shabu, which was bought and confiscated from appellant, brought to the police station, and was submitted to the crime laboratory for a qualitative examination, was the very same shabu presented and identified in court. The police had sufficiently preserved the integrity and evidentiary value of the seized item, thus, complying with the prescribed procedure in the custody and control of the confiscated drugs.

People of the Philippines vs. Salim Ismael Y Radang
G.R. No. 208093, FIRST DIVISION, February 20, 2017, J. DEL CASTILLO

Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence

FACTS:

On a buy bust operation held by the police, Salim was arrested and charged with violation of Sections 5 and 11, Article II of RA 9165 for selling and possession shabu. The shabu that was seized by police officers SPO1 Santiago and SPO1 Rodriguez to the Desk Officer, PO3 Floro Napalcruz who likewise turned over to the Duty Investigator PO2 Tan the placed his initials 'RDT'. Salim thereafter convicted with the crime charged. He alleged that his guilt had not been proven beyond reasonable doubt because the prosecution: (1) failed to establish the identity of the prohibited drugs allegedly seized from him and; (2) likewise failed to comply with the strict requirements of Section 21 of RA 9165 due to failure to immediately mark the seized drug.

ISSUE:

Whether or not there compliance of chain of custody of the seized drug.

RULING:

No, Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs. Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment-The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

The first link in the chain is the marking of the seized drug. We have previously held that:

x x x Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence.

It is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.

It is evident that there was a break in the very first link of the chain when he failed to mark the sachet of *shabu* immediately upon seizing them from the appellant. According to SPO1 Rodriguez, after finding sachets of *shabu* in appellant's possession, he turned the drugs over to the desk officer. SPO1 Rodriguez did not even explain why he failed to mark or why he could not have marked the seized items immediately upon confiscation. Allegedly, the desk officer, after receiving the seized items from SPO1 Rodriguez, in turn handed them over to PO2 Tan. Notably, this desk officer was not presented in court thereby creating another break in the chain of custody. Again, no explanation was offered for the non-presentation of the desk officer or why he himself did not mark the seized items. It was only upon receipt by PO2 Tan, allegedly from the desk officer, of the seized chugs that the same were marked at the police station. This means that from the time the drugs were seized from appellant until the time PO2 Tan marked the same, there was already a significant gap in the chain of custody. Because of this gap, there is no certainty that the sachets of drugs presented as evidence in the trial court were the same drugs found in appellant's possession.

No explanations were given why markings were not immediately made. At this stage in the chain, there was already a significant break such that there can be no assurance against switching, planting, or contamination. The Court has previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt."

Both arresting officers testified that they turned over the sachets of *shabu* to a desk officer in the person of PO3 Napalcruz at the police station. Notably, PO3 Napalcruz was not presented in court to testify on the circumstances surrounding the alleged receipt of the seized drugs. This failure to present PO3 Napalcruz is another fatal defect in an already broken chain of custody. Every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement. After PO3 Napalcruz, the seized drugs were then turned over to PO2 Tan. It was only at this point that marking was done on the seized drugs. Due to the apparent breaks in the chain of custody, it was possible that the seized item subject of the sale transaction was switched with the seized items subject of the illegal possession case. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug.

Aside from the failure to mark the seized drugs immediately upon arrest, the arresting officers also failed to show that the marking of the seized drugs was done in the presence of the appellant. This requirement must not be brushed aside as a mere technicality. It must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. Failure to comply with this requirement is fatal to the prosecution's case.

The requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering an explanation for its non-compliance. This break in the chain tainted the integrity of the seized drugs presented in court; the very identity of the seized drugs became highly questionable.

People of the Philippines vs. Salim Ismael Y Radang
G.R. No. 208093, FIRST DIVISION, February 20, 2017, J. DEL CASTILLO

Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimen will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, 'planting,' or contamination of evidence

FACTS:

On a buy bust operation held by the police, Salim was arrested and charged with violation of Sections 5 and 11, Article II of RA 9165 for selling and possession shabu. The shabu that was seized by police officers SPO1 Santiago and SPO1 Rodriguez to the Desk Officer, PO3 Floro Napalcruz who likewise turned over to the Duty Investigator PO2 Tan the placed his initials 'RDT'. Salim thereafter convicted with the crime charged. He alleged that his guilt had not been proven beyond reasonable doubt because the prosecution: (1) failed to establish the identity of the prohibited drugs allegedly seized from him and; (2) likewise failed to comply with the strict requirements of Section 21 of RA 9165 due to failure to immediately mark the seized drug.

ISSUE:

Whether or not there compliance of chain of custody of the seized drug.

RULING:

No, Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs. Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment-The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

The first link in the chain is the marking of the seized drug. We have previously held that:

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It is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.

It is evident that there was a break in the very first link of the chain when he failed to mark the sachet'3 of *shabu* immediately upon seizing them from the appellant. According to SPO1 Rodriguez, after finding sachets of *shabu* in appellant's possession, he turned the drugs over to the desk officer. SPO1 Rodriguez did not even explain why he failed to mark or why he could not have marked the seized items immediately upon confiscation. Allegedly, the desk officer, after receiving the seized items from SPO1 Rodriguez, in turn handed them over to PO2 Tan. Notably, this desk officer was not presented in court thereby creating another break in the chain of custody. Again, no explanation was offered for the non-presentation of the desk officer or why he himself did not mark the seized items. It was only upon receipt by PO2 Tan, allegedly from the desk officer, of the seized chugs that the same were marked at the police station. This means that from the time the drugs were seized from appellant until the time PO2 Tan marked the same, there was already a significant gap in the chain of custody. Because of this gap, there is no certainty that the sachets of drugs presented as evidence in the trial court were the same drugs found in appellant's possession.

No explanations were given why markings were not immediately made. At this stage in the chain, there was already a significant break such that there can be no assurance against switching, planting, or contamination. The Court has previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt."

Both arresting officers testified that they turned over the sachets of *shabu* to a desk officer in the person of PO3 Napalcruz at the police station. Notably, PO3 Napalcruz was not presented in court to testify on the circumstances surrounding the alleged receipt of the seized drugs. This failure to present PO3 Napalcruz is another fatal defect in an already broken chain of custody. Every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement. After PO3 Napalcruz, the seized drugs were then turned over to PO2 Tan. It was only at this point that marking was done on the seized drugs. Due to the apparent breaks in the chain of custody, it was possible that the seized item subject of the sale transaction was switched with the seized items subject of the illegal possession case. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug.

Aside from the failure to mark the seized drugs immediately upon arrest, the arresting officers also failed to show that the marking of the seized drugs was done in the presence of the appellant. This requirement must not be brushed aside as a mere technicality. It must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. Failure to comply with this requirement is fatal to the prosecution's case.

The requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering an explanation for its non-compliance. This break in the chain tainted the integrity of the seized drugs presented in court; the very identity of the seized drugs became highly questionable.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, vs. RAMIL DORIA DAHIL and ROMMEL CASTRO y CARLOS, *Accused-Appellants*.
G.R. No. 212196, SECOND DIVISION, January 12, 2015, MENDOZA, *J.:*

The presentation of the dangerous drugs as evidence in court is material if not indispensable in every prosecution for the illegal sale and possession of dangerous drugs. As such, the identity of the dangerous drugs should be established beyond doubt by showing that the items offered in court were the same substances bought during the buy-bust operation. This rigorous requirement, known under R.A. No. 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.

FACTS:

On October 1, 2002, Dahil and Castro were charged in three (3) separate Informations before the RTC with violation of Section 5, Article II of R.A. No. 9165 for the sale of 26.8098 grams of marijuana.

Evidence of the prosecution tended to show that, for a couple of weeks, the agents of the Philippine Drug Enforcement Agency (PDEA), Region 3, conducted surveillance and casing operations relative to the information they received that a certain alias "Buddy" and alias "Mel" were trafficking dried marijuana in TB Pavilion, Marisol Subdivision, Barangay Ninoy Aquino, Angeles City. On September 29, 2002, the Chief of PDEA formed a team to conduct a buy-bust operation. The team was composed of four (4) police officers, namely, Sergeant Juanito dela Cruz (Sergeant dela Cruz), as team leader; and PO2 Corpuz, SPO1 Licu and PO2 Javiar, as members. PO2 Corpuz was designated as the poseur-buyer while SPO1 Licu was assigned as his back-up.

In his defense, Dahil claimed that on September 29, 2002, a tricycle driver came looking for him after he had arrived home. He saw the tricycle driver with another man already waiting for him. He was then asked by the unknown man whether he knew a certain Buddy in their place. He answered that there were many persons named Buddy. Suddenly, persons alighted from the vehicles parked in front of his house and dragged him into one of the vehicles. He was brought to Clark Air Base and was charged with illegal selling and possession of marijuana.

For his part, Castro testified thaton September 29, 2002, he was on 4th Street of Marisol, Barangay Ninoy Aquino, Angeles City, watching a game of chess when he was approached by some men who asked if he knew a certain Boy residing at Hardian Extension. He then replied that he did not know the said person and then the men ordered him to board a vehicle and brought him to Clark Air Base where he was charged with illegal possession of marijuana.

ISSUE:

Whether or not the law enforcement officers substantially complied with the chain of custody procedure required by R.A. No. 9165.

RULING:

The strict procedure under Section 21 of R.A. No. 9165 was not complied with.

A buy-bust operation gave rise to the present case. While this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible topolice abuse, the most notorious of which is its use as a tool for extortion.

The presentation of the dangerous drugs as evidence in court is material if not indispensable in every prosecution for the illegal sale and possession of dangerous drugs. As such, the identity of the dangerous drugs should be established beyond doubt by showing that the items offered in court were the same substances bought during the buy-bust operation. This rigorous requirement, known under R.A. No. 9165 as the chain of custody, performs the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.

In People v. Catalan, the Court said: To discharge its duty of establishing the guilt of the accused beyond reasonable doubt, therefore, the Prosecution must prove the corpus delicti. That proof is vital to a judgment of conviction. On the other hand, the Prosecution does not comply with the indispensable requirement of proving the violation of Section 5 of Republic Act No. 9165 when the dangerous drugs are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts about the authenticity of the evidence presented in court.

As a means of ensuring the establishment of the chain of custody, Section 21 (1) of R.A. No. 9165 specifies that:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photographthe same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Specifically, Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 enumerates the procedures to be observed by the apprehending officers to confirm the chain of custody, to wit:

x x x(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrantis served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; x x x

The strict procedure under Section 21 of R.A. No. 9165 was not complied with. Although the prosecution offered in evidence the Inventory of the Property Seized signed by the arresting officers and Kagawad Pamintuan, the procedures provided in Section 21 of R.A. No. 9165 were not observed. The said provision requires the apprehending team, after seizure and confiscation, to immediately (1) conduct a physically inventory; and (2) photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/orseized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required tosign the copies of the inventory and be given a copy thereof.

First, the inventory of the property was not immediately conducted after seizure and confiscation as it was only done at the police station. Notably, Article II, Section 21(a) of the IRR allows the inventory to be done at the nearest police station or at the nearest office of the apprehending team whichever is practicable, in case of warrantless seizures. In this case, however, the prosecution did not even claim that the PDEA Office Region 3 was the nearest office from TB Pavilion where the drugs were seized. The prosecution also failed to give sufficient justification for the delayed conduct of the inventory.

PO2 Corpuz gave the flimsy excuse that they failed to immediately conduct an inventory because they did not bring with them the material or equipment for the preparation of the documents. Such explanation is unacceptable considering that they conducted a surveillance on the target for a couple of weeks. They should have been prepared with their equipment even before the buy-bust operation took place.

Second, there is doubt as to the identity of the person who prepared the Inventory of Property Seized. According to the CA decision, it was Sergeant dela Cruz who prepared the said document. PO2 Cruz on the other hand, testified that it was their investigator who prepared the document while SPO1 Licu's testimony was that a certain SPO4 Jamisolamin was their investigator.

Third, there were conflicting claims on whether the seized items were photographed in the presence of the accused or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official.

In other words, when questioned on the conduct of the inventory, PO2 Corpuz testified that no pictures of the seized items were taken while SPO1 Licu said that pictures of the accused were taken. From the vague statements of the police officers, the Court doubts that photographs of the alleged drugs were indeed taken. The records are bereft of any document showing the photos of the seized items. The Court notes that SPO1 Licu could have misunderstood the question because he answered that "pictures were taken on the accused" when the question referred to photographs of the drugs and not of the accused.

The prosecution failed to establish that the integrity and evidentiary value of the seized items were preserved.

To ensure that the integrity and the evidentiary value of the seized items are preserved, the proper chain of custody of the seized items must be shown.

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165,

however, this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.

In the present case, PO2 Corpuz and SPO1 Licu claimed that they had placed their initials on the seized items. They, however, gave little information on how they actually did the marking. It is clear, nonetheless, that the marking was not immediately done at the place of seizure, and the markings were only placed at the police station based on the testimony of PO2 Corpuz.

Hence, from the place of the seizure to the PDEA Office Region 3, the seized items were not marked. It could not, therefore, be determined how the unmarked drugs were handled. The Court must conduct guesswork on how the seized drugs were transported and who took custody of them while in transit. Evidently, the alteration of the seized items was a possibility absent their immediate marking thereof.

The investigator in this case was a certain SPO4 Jamisolamin. Surprisingly, there was no testimony from the witnesses as to the turnover of the seized items to SPO4 Jamisolamin. It is highly improbable for an investigator in a drug-related case to effectively perform his work without having custody of the seized items. Again, the case of the prosecution is forcing this Court to resort to guesswork as to whether PO2 Corpuz and SPO1 Licu gave the seized drugs to SPO4 Jamisolamin as the investigating officer or they had custody of the marijuana all night while SPO4 Jamisolamin was conducting his investigation on the same items.

In People v. Remigio, the Court noted the failure of the police officers to establish the chain of custody as the apprehending officer did not transfer the seized items to the investigating officer. The apprehending officer kept the alleged shabu from the time of confiscation until the time he transferred them to the forensic chemist. The deviation from the links in the chain of custody led to the acquittal of the accused in the said case.

In view of all the foregoing, the Court can only conclude that, indeed, there was no compliance with the procedural requirements of Section 21 of R.A. No. 9165 because of the inadequate physical inventory and the lack of photography of the marijuana allegedly confiscated from Dahil and Castro. No explanation was offered for the non-observance of the rule. The prosecution cannot apply the saving mechanism of Section 21 of the IRR of R.A. No. 9165 because it miserably failed to prove that the integrity and the evidentiary value of the seized items were preserved. The four links required to establish the proper chain of custody were breached with irregularity and lapses.

PEOPLE OF THE PHILIPPINES, *appellee*, vs. RANILO DE LA CRUZ Y LIZING, *appellant.*
G.R. No. 177222, SECOND DIVISION, October 29, 2008, TINGA, *J.*:

In the case at bar, the Court finds that the arresting officers failed to strictly comply with the guidelines prescribed by the law regarding the custody and control of the seized drugs despite its mandatory terms. While there was testimony regarding the marking of the seized items at the police station, there was no mention whether the same had been done in the presence of appellant or his representatives. There was likewise no mention that any representative from the media, DOJ or any elected official had been present during the inventory or that any of these people had been required to sign the copies of the inventory. Neither does it appear on record that the team photographed the contraband in accordance with law.

FACTS:

On 13 September 2002, Dela Cruz was charged with the violation of Section 5, Article II of Republic Act No. 9165.

That on or about the 12th day of September 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully and feloniously deliver, distribute, transport or sell to poseur-buyer PO2 Nick Resuello[,] one (1) heat-sealed transparent plastic sachet containing 0.03 gram each of white crystalline substance, which were found positive to the test for Methamphetamine Hydrochloride, commonly known as "*shabu*," a dangerous drug, for the amount of ₱100.00 without the corresponding license and prescription.

On arraignment, petitioner pleaded not guilty. Thereafter, trial on the merits ensued with the prosecution presenting as witnesses arresting officers PO2 Braulio Peregrino, PO2 Nick Resuello, PO2 Marcelino Boyles, PO2 Allan Drilon, investigator-on-case PO3 Virgilio Bismonte and Forensic Chemist Joseph Perdido.

Prosecution evidence shows that on 12 September 2002, the Office of the Station Drugs Enforcement Unit (SDEU), Mandaluyong City received information that appellant, alias "*Boy Tigre*," of No. 73, Dela Cruz Street, Barangay Old Zaniga, Mandaluyong City was engaging in the trade of illegal drugs. A team composed of Peregrino, Boyles, Drilon and Resuello was dispatched to conduct a buy-bust operation in the area at around 2:00 p.m. of the same day. Peregrino, Boyles, and Drilon positioned themselves at a nearby area while Resuello, the designated poseur-buyer, approached appellant described as a long-haired, medium built, not-so-tall male, sporting a moustache and frequently seen wearing short pants. At the time, appellant was standing outside of their gate and kept on glancing from side to side. Resuello then told appellant that he wanted to buy shabu. Dela Cruz looked surprised prompting Resuello to repeat what he had said and handed him the ₱100 bill. Appellant, in turn, handed him a plastic sachet containing the white crystalline substance. At which point, Resuello executed the pre-arranged signal and Peregrino immediately rushed to the scene.

Peregrino, identifying himself as a policeman, held appellant and informed him of his constitutional rights. Peregrino then recovered the buy-bust money from appellant. Subsequently, appellant was brought to SDECU for investigation. Thereat, Peregrino placed his initials (BP) on the plastic sachet containing the white crystalline substance before sending it to the Eastern Police District Crime Laboratory for chemical examination. The sachet was later tested positive for methamphetamine hydrochloride, a dangerous drug. Subsequently, Peregrino and Resuello accomplished the booking and information sheets regarding the incident. Peregrino also executed an affidavit on the matter. Appellant was later identified as Ranilo Dela Cruz y Lising.

On cross-examination, Peregrino and Resuello admitted that the buy-bust money had neither been dusted with fluorescent powder nor marked. They only made a photocopy of it prior to the operation for purposes of identification. Peregrino also testified that appellant had not been tested for the presence of fluorescent powder; neither was a drug examination conducted on him. After the arrest, Peregrino narrated that his office made a report on the matter which was forwarded to the Philippine Drug Enforcement Agency (PDEA). Boyles testified likewise on cross-examination that at the time of the arrest, they had no coordination with PDEA. Drilon, on the other hand, testified that he had not actually seen the transaction.

Forensic Chemist Perdido testified that the plastic sachet was found to contain methamphetamine hydrochloride. He, however, admitted that he examined the specimen and had made the markings on the same without the presence of appellant.

For the defense, appellant testified that on 12 September 2002, at around 1:00 to 2:00 p.m., he was in his house watching television with his wife when he heard a knock at the door. Outside, he came upon two men looking for "Boy Tigre." After admitting that it was he they were looking for, he was told that the barangay captain needed him. He went with the two men to see the barangay captain. Thereat, the barangay captain asked whether he knew of anyone engaged in large-scale drug pushing. Appellant replied in the negative and in response, the barangay captain stated that there was nothing more he (the barangay captain) can do. Appellant was then told to go to the City Hall. At first, his wife accompanied him there but he later asked her to go home and raise the money Bismonte had allegedly demanded from him in exchange for his freedom. When appellant's wife failed to return as she had given birth, a case for violation of Section 5, Article II of R.A. No. 9165 was filed against him. [16] Appellant added that he used to be involved in "video-karera" and surmised that this involvement could have provoked the barangay captain's wrath.

ISSUE:

Whether or not the law enforcement officers substantially complied with the chain of custody procedure required by R.A. No. 9165.

RULING:

NO, the law enforcement officers did not comply with the chain of custody procedure required by R.A. No. 9165.

At the outset, it is well to restate the constitutional mandate that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case the presumption prevails and the accused should necessarily be acquitted.

In prosecutions for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. The dangerous drug is the very *corpus delicti* of the offense.

Section 21 of R.A. No. 9165 states that:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

The IRR of the same provision adds a proviso, to wit:

Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In the case at bar, the Court finds that the arresting officers failed to strictly comply with the guidelines prescribed by the law regarding the custody and control of the seized drugs despite its mandatory terms. While there was testimony regarding the marking of the seized items at the police station, there was no mention whether the same had been done in the presence of appellant or his representatives. There was likewise no mention that any representative from the media, DOJ or any elected official had been present during the inventory or that any of these people had been required to sign the copies of the inventory. Neither does it appear on record that the team photographed the contraband in accordance with law.

Now, the prosecution cannot seek refuge in the proviso of the IRR in the absence of proof of entitlement to such leniency. The prosecution rationalizes its oversight by merely stating that the integrity and evidentiary value of the seized items were properly preserved in accordance with law. The allegation hardly sways the Court save when it is accompanied by proof. According to the proviso of the IRR of Section 21(a) of R.A. No. 9165, non-compliance with the procedure shall not render void and invalid the seizure of and custody of the drugs only when: (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Clearly, there must be proof that these two (2) requirements were met before any such non-compliance may be said to fall within the scope of the proviso. Significantly, not only does the present case lack the most basic or elementary attempt at compliance with the law and its implementing rules; it fails as well to provide any justificatory ground showing that the integrity of the evidence had all along been preserved.

Failing to prove entitlement to the application of the proviso, the arresting officers' non-compliance with the procedure laid down by R.A No. 9156 is not excused. This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. The Court resolves the doubt in the integrity and identity of the *corpus delicti* in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. Considering that the prosecution failed to present the required quantum of evidence, appellant's acquittal is in order.

All told, the totality of the evidence presented in the instant case does not support appellant's conviction for violation of Section 5, Article II, R.A. No. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense. Following the constitutional mandate, when the guilt of the appellant has not been proven with moral certainty, as in this case, the presumption of innocence prevails and his exoneration should be granted as a matter of right.

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. GERRICO VALLEJO Y SAMARTINO @ PUKE, *accused-appellant.*
G.R. No. 144656, EN BANC, May 9, 2002, *PER CURIAM*:

In assessing the probative value of DNA evidence, therefore, courts should consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.

FACTS:

This involves rape incident wherein the conviction of the accused Gerrico Vallejo was obtained by the prosecution using DNA evidence gathered from the victim's body.

On the day of the crime, the victim, Daisy Diolola, a nine-year old girl went to the house of her tutor, the defendant's sister, for her lessons. An hour later, the victim returned home, accompanied by the defendant in order to get a book for her lessons. From the defendant's house, the victim proceeded to the house of her neighbor· to watch television. The defendant then arrived, whispered something to the victim and together they left heading towards the compuerta. That was the last time the victim was seen alive. The defendant was afterwards seen by some witnesses looking pale, uneasy and troubled, wearing clothes which were wet. The next day, the body of the victim was found tied to an aroma tree at the part of the river near the compuerta. An autopsy on the victim revealed that she was raped and then manually strangled to death.

When the defendant was invited by the policemen for questioning, he executed an extra-judicial confession admitting to the crime saying that he was· under the influence of drugs. A complaint was then filed against him for rape with homicide.

ISSUE:

Whether or not the trial court gravely erred in convicting the accused-appellant of rape with homicide despite the insufficiency and weakness of the circumstantial evidence of the prosecution.

RULING:

NO. The trial court gravely did not err in convicting the accused-appellant of rape with homicide.

An accused can be convicted even if no eyewitness is available, provided sufficient circumstantial evidence is presented by the prosecution to prove beyond reasonable doubt that the accused committed the crime. In rape with homicide, the evidence against an accused is more often than not circumstantial. This is because the nature of the crime, where only the victim and the rapist would have been present at the time of its commission, makes the prosecution of the offense particularly difficult since the victim could no longer testify against the perpetrator. Resort to circumstantial evidence is inevitable and to demand direct evidence proving the modality of the offense and the identity of the perpetrator is unreasonable.

Under Rule 133, section 4 of the Revised Rules on Evidence, circumstantial evidence is sufficient to sustain a conviction if:

"(a) there is more than one circumstance;

"(b) the facts from which the inferences are derived are proven; and

"(c) the combination of all circumstances is such as to produce conviction beyond reasonable doubt."

In the case at bar, circumstantial evidence were establish beyond reasonable doubt the guilt of accused-appellant.

Accused-appellant contends that the bloodstains found on his garments were not proven to have been that of the victim as the victim's blood type was not determined.

The contention has no merit. The examination conducted by Forensic Biologist Pet Byron Buan of both accused-appellant's and the victim's clothing yielded bloodstains of the same blood type "A". Even if there was no direct determination as to what blood type the victim had, it can reasonably be inferred that the victim was blood type "A" since she sustained contused abrasions all over her body which would necessarily produce the bloodstains on her clothing. That it was the victim's blood which predominantly registered in the examination was explained by Mr. Buan.

The DNA analysis conducted by NBI Forensic Chemist Aida Viloria-Magsipoc is also questioned by accused-appellant. He argues that the prosecution failed to show that all the samples submitted for DNA testing were not contaminated, considering that these specimens were already soaked in smirchy waters before they were submitted to the laboratory.

DNA is an organic substance found in a person's cells which contains his or her genetic code. Except for identical twins, each person's DNA profile is distinct and unique.

When a crime is committed, material is collected from the scene of the crime or from the victim's body for the suspect's DNA. This is the evidence sample. The evidence sample is then matched with the reference sample taken from the suspect and the victim.

The purpose of DNA testing is to ascertain whether an association exists between the evidence sample and the reference sample. The samples collected are subjected to various chemical processes to establish their profile. The test may yield three possible results:

1) The samples are different and therefore must have originated from different sources (exclusion). This conclusion is absolute and requires no further analysis or discussion;

2) It is not possible to be sure, based on the results of the test, whether the samples have similar DNA types (inconclusive). This might occur for a variety of reasons including degradation, contamination, or failure of some aspect of the protocol. Various parts of the analysis might then be repeated with the same or a different sample, to obtain a more conclusive result; or

3) The samples are similar, and could have originated from the same source (inclusion). In such a case, the samples are found to be similar, the analyst proceeds to determine the statistical significance of the Similarity.

In assessing the probative value of DNA evidence, therefore, courts should consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.

In the case at bar, the bloodstains taken from the clothing of the victim and of accused-appellant, the smears taken from the victim as well as the strands of hair and nails taken from her tested negative for the presence of human DNA.

Thus, it is the inadequacy of the specimens submitted for examination, and not the possibility that the samples had been contaminated, which accounted for the negative results of their examination. But the vaginal swabs taken from the victim yielded positive for the presence of human DNA. Upon analysis by the experts, they showed the DNA profile of accused-appellant.

In conclusion, the Court holds that the totality of the evidence points to no other conclusion than that accused-appellant is guilty of the crime charged. Evidence is weighed not counted. When facts or circumstances which are proved are not only consistent with the guilt of the accused but also inconsistent with his innocence, such evidence, in its weight and probative force, may surpass direct evidence in its effect upon the court.

PEOPLE OF THE PHILIPPINES, *appellee*, vs. JOEL YATAR alias "KAWIT", *appellant.*
G.R. No. 150224, EN BANC, May 19, 2004, PER CURIAM:

DNA print or identification technology has been advanced as a uniquely effective means to link a suspect to a crime, or to exonerate a wrongly accused suspect, where biological evidence has been left. For purposes of criminal investigation, DNA identification is a fertile source of both inculpatory and exculpatory evidence.

DNA evidence collected from a crime scene can link a suspect to a crime or eliminate one from suspicion in the same principle as fingerprints are used.

FACTS:

Appellant was charged with Rape with Homicide.

Judilyn and her husband, together with Isabel Dawang, left for their farm in Nagbitayan some two kilometers away. Kathylyn was left alone in the house.

Isabel Dawang arrived home and found that the lights in her house were off. She called out for her granddaughter, Kathylyn Uba. The door to the ground floor was open. She noticed that the water container she asked Kathylyn to fill up earlier that... day was still empty. She went up the ladder to the second floor of the house to see if Kathylyn was upstairs. She found that the door was tied with a rope, so she went down to get a knife. While she groped in the dark, she felt a lifeless body that was cold and rigid.

She found out that it was the naked body of her granddaughter, Kathylyn.

The people in the vicinity informed the police officers that appellant was seen going down the ladder of the house of Isabel Dawang.

When questioned by the police authorities, appellant denied any knowledge of Kathylyns's death. Appellant asked the police officers if he could relieve himself. Police Officer Cesar Abagan accompanied him to the toilet around seven to ten meters away from the police station. They

suddenly heard someone shout in the Ilocano dialect, "Nagtaray!" (He's... running away!). Police Officer Orlando Manuel exited through the gate of the Police Station and saw appellant running away. Appellant was approximately 70 meters away from the station when Police Officer Abagan recaptured him. He was charged with Rape with Homicide.

In an attempt to exclude the DNA evidence, the appellant contends that the blood sample taken from him as well as the DNA tests were conducted in violation of his right to remain silent as well as his right against self-incrimination under Secs. 12 and 17 of Art. III of the Constitution.

Appellant further argues that the DNA tests conducted by the prosecution against him are unconstitutional on the ground that resort thereto is tantamount to the application of an ex-post facto law.

ISSUE:

Whether or not the DNA Evidence should be admitted.

RULING:

YES, the DNA Evidence should be admitted.

It should also be noted that, although the Postmortem Report by the attending physician, Dr. Pej Evan C. Bartolo, indicates that no hymenal lacerations, contusions or hematoma were noted on the victim,Dr. Bartolo discovered the presence of semen in the vaginal canal of the victim. During his testimony, Dr. Bartolo stated that the introduction of semen into the vaginal canal could only be done through sexual intercourse with the victim. In addition, it is apparent from the pictures submitted by theprosecution that the sexual violation of the victim was manifested by a bruise and some swelling in her right forearm indicating resistance to the appellant's assault on her virtue.

Significantly, subsequent testing showed that the Deoxyribonucleic acid (DNA) of the sperm specimen from the vagina of the victim was identical the semen to be that of appellant's gene type because of polymorphisms in human genetic structure, no two individuals have the same DNA, with the notable exception of identical twins.

DNA print or identification technology has been advanced as a uniquely effective means to link a suspect to a crime, or to exonerate a wrongly accused suspect, where biological evidence has been left. For purposes of criminal investigation, DNA identification is a fertile source of both inculpatory and exculpatory evidence.

DNA evidence collected from a crime scene can link a suspect to a crime or eliminate one from suspicion in the same principle as fingerprints are used.

If properly collected from the victim, crime scene or assailant, DNA can be compared with known samples to place the suspect at the scene of the crime.

In assessing the probative value of DNA evidence, courts should consider, inter alia, the following factors: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether... the proper standards and

procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests.

In the case at bar, Dr. Maria Corazon Abogado de Ungria was duly qualified by the prosecution as an expert witness on DNA print or identification techniques. Based on Dr. de Ungria's testimony, it was determined that the gene type and DNA profile of appellant are identical to that of the extracts subject of examination.

Verily, a DNA match exists between the semen found in the victim and the blood sample given by the appellant in open court during the course of the trial.

In Daubert v. Merrell Dow, it was ruled that pertinent evidence based on scientifically valid principles could be used as long as it was relevant and reliable. Judges, under Daubert, were allowed greater discretion over which testimony they would allow at trial, including the introduction of new kinds of scientific techniques. DNA typing is one such novel procedure.

Evidence is relevant when it relates directly to a fact in issue as to induce belief in its existence or non-existence. Applying the Daubert test to the case at bar, the DNA evidence obtained through PCR testing andutilizing STR analysis, and which was appreciated by the court a quo is relevant and reliable since it is reasonably based on scientifically valid principles of human genetics and molecular biology.

Independently of the physical evidence of appellant's semen found in the victim's vaginal canal, the trial court appreciated circumstantial evidence as being sufficient to sustain a conviction beyond reasonable doubt.

Circumstantial evidence, to be sufficient to warrant a conviction, must form an unbroken chain which leads to a fair and reasonable conclusion that the accused, to the exclusion of others, is the perpetrator of the crime. To determine whether there is sufficient circumstantial evidence, three requisites must concur: (1) there is more than one circumstance; (2) facts on which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The kernel of the right is not against all compulsion, but against testimonial compulsion. The right against self- incrimination is simply against the legal process of extracting from the lips of the accused an admission of guilt. It does not apply where the evidence sought to be excluded is not an incrimination but as part of object evidence. Hence, a person may be compelled to submit to fingerprinting, photographing, paraffin, blood and DNA, as there is no testimonial compulsion involved.

The accused may be compelled to submit to a physical examination to determine his involvement in an offense of which he is accused.
It must also be noted that appellant in this case submitted himself for blood sampling which was conducted in open court in the presence of counsel.

No ex-post facto law is involved in the case at bar. The science of DNA typing involves the admissibility, relevance and reliability of the evidence obtained under the Rules of Court. Whereas an ex-post facto law refers primarily to a question of law, DNA profiling requires a factual determination of the probative weight of the evidence presented.

Appellant's twin defense of denial and alibi cannot be sustained. The forensic DNA evidence and bloodied shirt, notwithstanding the eyewitness accounts of his presence at Isabel Dawang's house during the time when the crime was committed, undeniably link him to the... incident. Appellant did not demonstrate with clear and convincing evidence an impossibility to be in two places at the same time, especially in this case where the two places are located in the same barangay. He lives within a one hundred (100) meter radius from the scene of the crime, and requires a mere five minute walk to reach one house from the other. This fact severely weakens his alibi.

ESTATE OF ROGELIO G. ONG, *petitioner*, vs. Minor JOANNE RODJIN DIAZ, Represented by Her Mother and Guardian, Jinky C. Diaz, *respondent.*
G.R. No. 171713, THIRD DIVISION, December 17, 2007, CHICO-NAZARIO, J.:

The New Rules on DNA Evidence permits the manner of DNA testing by using biological samples–organic material originating from the person's body, for example, blood, saliva, other body fluids, tissues, hair, bones, even inorganic materials- that is susceptible to DNA testing.

FACTS:

Minor Diaz filed a complaint before the Regional Trial Court for compulsory recognition with prayer for support against Rogelio Ong, she was represented by her mother Jinky.

Before the case, Jinky married a certain Hasegawa Katsuo, Japanese. That same year, Jinky met Rogelio, they fell in love. The next year, Rogelio and Jinky cohabited. After four years, Joanna was born, Rogelio recognized Joanna as his, however, that same year, Rogelio abandoned them and stopped giving support to Joanna, he alleged that he is not the father of Joanna, hence this petition.

RTC rendered a decision and declared the minor to be the illegitimate child of Ong with Jinky Diaz, and ordering him to support the child until she reaches the age of majority. Ong opposed the CA's order to directing the Estate and Joanne Rodgin Diaz for DNA analysis for determining the paternity of the minor Joanne.

During the pendency of the case, Rogelion Died. The Estate filed a motion for reconsideration with the Court of Appeals. They contended that a dead person cannot be subject to testing. CA justified that "DNA paternity testing, as current jurisprudence affirms, would be the most reliable and effective method of settling the present paternity dispute.

ISSUE:

Whether or not DNA analysis can still be done despite the fact that it is no longer feasible due to the death of Rogelio.

RULING:

Yes. The court held that the death of Rogelio does not ipso facto negate the application of DNA analysis so long as there exist, suitable biological samples of his DNA.

DNA is the fundamental building block of a person's entire genetic make- up. DNA is found in all human cells and is the same in every cell of the same person. Genetic identity is unique. Hence, a person's DNA profile can determine his identity.

The New Rules on DNA Evidence permits the manner of DNA testing by using biological samples– organic material originating from the person's body, for example, blood, saliva, other body fluids, tissues, hair, bones, even inorganic materials- that is susceptible to DNA testing.

In case proof of filiation or paternity would be unlikely to adequately found or would be hard to get, DNA testing, which examines genetic codes found from body cells of the illegitimate child and any physical remains of the long dead parent could be resorted to.

Thus, even if Rogelio already died, any of the biological samples as enumerated above as may be available, may be used for DNA testing. In this case, petitioner has not shown the impossibility of obtaining an appropriate biological sample that can be utilized for the conduct of DNA testing. And even the death of Rogelio cannot bar the conduct of DNA testing.

REPUBLIC OF THE PHILIPPINES *Petitioner,* vs. MA. IMELDA "IMEE" R. MARCOS-MANOTOC, FERDINAND "BONGBONG" R. MARCOS, JR., GREGORIO MA. ARANETA III, IRENE R. MARCOS-ARANETA, YEUNG CHUN FAN, YEUNG CHUN HO, YEUNG CHUN KAM, and PANTRANCO EMPLOYEES ASSOCIATION (PEA)-PTGWO, *Respondents.*
G. R. No. 171701, SECOND DIVISION, February 8, 2012, SERENO, *J.:*

The presentation of the originals of the aforesaid exhibits is not validly excepted under Rule 130 of the Rules of Court. Under Section 3 (d), when 'the original document is a public record in the custody of a public officer or is recorded in a public office,' the original thereof need not be presented. However, all except one of the exhibits are not necessarily public documents. The transcript of stenographic notes (TSN) of the proceedings purportedly before the PCGG may be a public document but what the plaintiff presented was a mere photocopy of the purported TSN which was not a certified copy and was not even signed by the stenographer who supposedly took down the proceedings. The Rules provide that when the original document is in the custody of a public officer or is recorded in a public office; a certified copy issued by the public officer in custody thereof may prove its contents.

FACTS:

After the People Power Revolution in 1986, President Corazon C. Aquino created the Presidential Commission on Good Government (PCGG) that was primarily tasked to investigate and recover the alleged ill-gotten wealth amassed by the then President Ferdinand E. Marcos, his immediate family, relatives and associates.

On 16 July 1987, the PCGG, acting on behalf of the Republic with the Office of the Solicitor General (OSG), filed a Complaint for Reversion, Reconveyance, Restitution, Accounting and Damages against Ferdinand E. Marcos, who was later substituted by his estate upon his death; Imelda R. Marcos; and herein respondents Imee Marcos-Manotoc, Irene Marcos-Araneta, Bongbong Marcos, Tomas Manotoc, and Gregorio Araneta III.

Four amended Complaints were thereafter filed imputing active participation and collaboration of another persons, viz. Nemesio G. Co and Yeungs (Kam, Ho and Fan) of Glorious Sun Fashion Manufacturing Corporation Phils.; and, Imelda Cojuangco for the estate of Ramon Cojuangco and

Prime Holdings, in the alleged illegal activities and undertakings of the Marcoses in relation to the ₱200 Billion Pesos ill-gotten wealth allegation.

Petitioner presented and formally offered its evidence against herein respondents. However, the latter objected on the ground that the documents were unauthenticated and mere photocopies.

On 2002, the Sandiganbayan issued a RESOLUTION ADMITTING all the documentary exhibits formally offered by the prosecution; however, their evidentiary value was left to the determination of the Court.

Subsequently, Imelda R. Marcos, Imee Marcos-Manotoc and Bongbong Marcos, Jr.; Irene Marcos-Araneta and Gregorio Ma. Araneta III;Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan; and the PEA-PTGWO filed their respective Demurrers to Evidence.

On 2005, the Sandiganbayan issued a resolution, granting all the demurrers to evidence except the one filed by Imelda R. Marcos. The sequestration orders on the properties in the name of Gregorio Maria AranetaIII are accordingly lifted.

With regard to Imee Marcos-Manotoc and Bongbong Marcos, Jr., Irene Marcos and Gregorio Araneta III, the court noted that their involvement in the alleged illegal activities was never established; neither did the documentary evidence pinpoint their involvement therein. The court held that all presented evidence are hearsay, for being merely photocopies and that the originals were not presented in court, nor were they authenticated by the persons who executed them. Furthermore, the court pointed out that petitioner failed to provide any valid reason why it did not present the originals in court. These exhibits were supposed to show the interests of Imee Marcos-Manotoc in the media networks IBC-13, BBC-2 and RPN-9, all three of which she had allegedly acquired illegally, her alleged participation in dollar salting through De Soleil Apparel and to prove how the Marcoses used the Potencianos as dummies in acquiring and operating the bus company PANTRANCO.

Meanwhile, as far as the YEUNGS were concerned, the court found the allegations against them baseless. Petitioner failed to demonstrate howGlorious Sunwas used as a vehicle for dollar salting; or to show that they were dummies of the Marcoses. Again, the court held that the documentary evidence relevant to this allegation was INADMISSIBLE for being mere photocopies, and that the affiants had not been presented as witnesses.

ISSUE:

The Sandiganbayan erred in granting the demurrers to evidence filed by respondents Ma. Imelda (Imee) R. Marcos and Ferdinand (Bongbong) R. Marcos, Jr.; respondent-Spouses Gregorio Araneta Iii And Irene Marcos Araneta and respondents Yeung Chun Kam, Yeung Chun Fan, and Yeung Chun Ho.

RULING:

NO. Sandiganbayan is correct in granting the respondents respective demurrers to evidence.

It is petitioner's burden to prove the allegations; the operative act on how and in what manner must be clearly shown through preponderance of evidence.

The petitioner does not deny that what should be proved are the contents of the documents themselves. It is imperative; therefore, to submit the original documents that could prove petitioner's allegations. Thus, the photocopied documents are in violation of best evidence rule, which mandates that the evidence must be the original document itself. Furthermore, petitioner did not even attempt to provide a plausible reason why the originals were not presented, or any compelling ground why the court such documents as secondary evidence absent the affiant's testimony

The presentation of the originals of the aforesaid exhibits is not validly excepted under Rule 130 of the Rules of Court. Under Section 3 (d), when 'the original document is a public record in the custody of a public officer or is recorded in a public office,' the original thereof need not be presented. However, all except one of the exhibits are not necessarily public documents. The transcript of stenographic notes (TSN) of the proceedings purportedly before the PCGG may be a public document but what the plaintiff presented was a mere photocopy of the purported TSN which was not a certified copy and was not even signed by the stenographer who supposedly took down the proceedings. The Rules provide that when the original document is in the custody of a public officer or is recorded in a public office; a certified copy issued by the public officer in custody thereof may prove its contents.

In order that secondary evidence may be admissible, there must be proof by satisfactory evidence of (1) due execution of the original; (2) loss, destruction or unavailability of all such originals and (3) reasonable diligence and good faith in the search for or attempt to produce the original. None of the abovementioned requirements were complied by the plaintiff. Exhibits 'P', 'Q', 'R', 'S', and 'T' were all photocopies. 'P', 'R', and 'T' were affidavits of persons who did not testify before the Court. Exhibit 'S' is a letter, which is clearly a private document. It is emphasized, even if originals of these affidavits were presented, they would still be considered hearsay evidence if the affiants do not testify and identify them.

Petitioner having failed to observe the best evidence rule rendered the offered documentary evidence futile and worthless in alleged accumulation of ill-gotten wealth insofar as the specific allegations herein were concerned.

EDSA SHANGRI-LA HOTEL AND RESORT, INC., RUFO B. COLAYCO, RUFINO L. SAMANIEGO, KUOK KHOON CHEN, and KUOK KHOON TSEN, *petitioners*, vs. BF CORPORATION, *respondent*. G.R. No. 145842, June 27, 2008 SECOND DIVISION VELASCO, JR., J.

"The original of a writing must, as a general proposition, be produced and secondary evidence of its contents is not admissible except where the original cannot be had."

"When such party has the original of the writing and does not voluntarily offer to produce it or refuses to produce it, secondary evidence may be admitted."

FACTS:

A construction contract denominated as Agreement for the Execution of Builder's Work for the EDSA Shangri-la Hotel Project[4] that ESHRI and BF executed for the construction of the EDSA Shangri-la Hotel starting May 1, 1991. Among other things, the contract stipulated for the payment of the contract price on the basis of the work accomplished as described in the monthly progress billings. Under this arrangement, BF shall submit a monthly progress billing to ESHRI which would then re-

measure the work accomplished and prepare a Progress Payment Certificate for that month's progress billing

In a memorandum-letter dated August 16, 1991 to BF, ESHRI laid out the collection procedure BF was to follow, to wit: (1) submission of the progress billing to ESHRI's Engineering Department; (2) following-up of the preparation of the Progress Payment Certificate with the Head of the Quantity Surveying Department; and (3) following-up of the release of the payment with one Evelyn San Pascual. BF adhered to the procedures agreed upon in all its billings for the period from May 1, 1991 to June 30, 1992, submitting for the purpose the required Builders Work Summary, the monthly progress billings, including an evaluation of the work in accordance with the Project Manager's Instructions (PMIs) and the detailed valuations contained in the Work Variation Orders (WVOs) for final re-measurement under the PMIs. BF said that the values of the WVOs were contained in the progress billings under the section "Change Orders."

From May 1, 1991 to June 30, 1992, BF submitted a total of 19 progress billings following the procedure agreed upon. Based on Progress Billing Nos. 1 to 13, ESHRI paid BF PhP 86,501,834.05.[7] According to BF, however, ESHRI, for Progress Billing Nos. 14 to 19, did not re-measure the work done, did not prepare the Progress Payment Certificates, let alone remit payment for the inclusive periods covered. In this regard, BF claimed having been misled into working continuously on the project by ESHRI which gave the assurance about the Progress Payment Certificates already being processed.

After several futile attempts to collect the unpaid billings, BF filed, on July 26, 1993, before the RTC a suit for a sum of money and damages.
In its defense, ESHRI claimed having overpaid BF for Progress Billing Nos. 1 to 13 and, by way of counterclaim with damages, asked that BF be ordered to refund the excess payments. ESHRI also charged BF with incurring delay and turning up with inferior work accomplishment.

ISSUE:

Whether or not the [CA] committed grave abuse of discretion in disregarding issues of law raised by petitioners in their appeal [particularly in admitting in evidence photocopies of Progress Billing Nos. 14 to 19, PMIs and WVOs.

RULING:

The petition has no merit.

The only actual rule that the term "best evidence" denotes is the rule requiring that the original of a writing must, as a general proposition, be produced and secondary evidence of its contents is not admissible except where the original cannot be had. Rule 130, Section 3 of the Rules of Court enunciates the best evidence rule:

SEC. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (Emphasis added.)

Complementing the above provision is Sec. 6 of Rule 130, which reads:

SEC. 6. When original document is in adverse party's custody or control. - If the document is in the custody or under control of the adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of loss.

Secondary evidence of the contents of a written instrument or document refers to evidence other than the original instrument or document itself.[18] A party may present secondary evidence of the contents of a writing not only when the original is lost or destroyed, but also when it is in the custody or under the control of the adverse party. In either instance, however, certain explanations must be given before a party can resort to secondary evidence.

In our view, the trial court correctly allowed the presentation of the photocopied documents in question as secondary evidence. Any suggestion that BF failed to lay the required basis for presenting the photocopies of Progress Billing Nos. 14 to 19 instead of their originals has to be dismissed.

Clearly, the circumstances obtaining in this case fall under the exception under Sec. 3(b) of Rule 130. In other words, the conditions sine qua non for the presentation and reception of the photocopies of the original document as secondary evidence have been met. These are: (1) there is proof of the original document's execution or existence; (2) there is proof of the cause of the original document's unavailability; and (3) the offeror is in good faith.[19] While perhaps not on all fours because it involved a check, what the Court said in Magdayao v. People, is very much apt, thus:

"To warrant the admissibility of secondary evidence when the original of a writing is in the custody or control of the adverse party, Section 6 of Rule 130 provides that the adverse party must be given reasonable notice, that he fails or refuses to produce the same in court and that the offeror offers satisfactory proof of its existence."

The mere fact that the original of the writing is in the custody or control of the party against whom it is offered does not warrant the admission of secondary evidence. The offeror must prove that he has done all in his power to secure the best evidence by giving notice to the said party to produce the document. The notice may be in the form of a motion for the production of the original or made in open court in the presence of the adverse party or via a subpoena duces tecum, provided that the party in custody of the original has sufficient time to produce the same. When such party has the original of the writing and does not voluntarily offer to produce it or refuses to produce it, secondary evidence may be admitted.

CONCEPCION CHUA GAW v. SUY BEN C H U A and FELISA CHUA G.R. No. 160855, 16 April 2008, THIRD DIVISION, (Nachura, J.)

The "best evidence rule" as encapsulated in Rule 130, Section 3, of the Revised Rules of Civil Procedure applies only when the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply, and testimonial evidence is admissible.

Any other substitutionary evidence is likewise admissible without need to account for the original. Moreover, production of the original may be dispensed with, in the trial court's discretion, whenever the opponent does not bona fide dispute the contents of the document*and no other useful purpose will be served by requiring production.*

FACTS:

That the witness is the adverse party does not necessarily mean that the calling party will not be bound by the former's testimony. The fact remains that it was at his instance that his adversary was put on the witness stand. Unlike an ordinary witness, the calling party may impeach an adverse witness in all respects as if he had been called by the adverse party, except by evidence of his bad character. Under a rule permitting the impeachment of an adverse witness, although the calling party does not vouch for the witness' veracity, he is nonetheless bound by his testimony if it is not contradicted or remains unrebutted.

Spouses Chua Chin and Chan Chi were the founders of three business enterprises namely: Hagonoy Lumber, Capitol Sawmill Corporation, and Columbia Wood Industries. The couple had seven (7) children, namely, Santos Chua; Concepcion Chua; Suy Ben Chua; Chua Suy Phen; Chua Sioc Huan; Chua Suy Lu; and Julita Chua. When Chua Chin died, he left his wife Chan Chi and his 7 children as his only surviving heirs. At the time of his death, the net worth of Hagonoy Lumber was P415,487.20. On December 8, 1986, his surviving heirs executed a Deed of Extra-Judicial Partition and Renunciation of Hereditary Rights in Favor of a Co-Heir (Deed of Partition), wherein the heirs settled their interest in Hagonoy Lumber. In said document, Chan Chi and the six children likewise agreed to voluntarily renounce and waive their shares over Hagonoy Lumber in favor of their co-heir, Chua Sioc Huan.

In May 1988, petitioner Concepcion Chua Gaw and her husband, Antonio Gaw (Spouses Gaw), asked respondent Suy Ben Chua, to lend them P200,000.00 which they will use for the construction of their house in Marilao, Bulacan. The parties agreed that the loan will be payable within six (6) months without interest. Suy Ben issued a check in the amount of P200,000.00 to the couple. However, the latter failed to pay the amount within the designated period. Suy Ben sent them a demand letter, requesting to settle their obligation with the warning that he will take the appropriate legal action if they fail to do so. Failing to heed his demand, Suy Ben filed a Complaint for Sum of Money against the spouses Gaw with the Regional Trial Court (RTC).

During trial, the spouses Gaw called the Suy Ben to testify as adverse witness under Section 10, Rule 132. On direct examination, Suy Ben testified that Hagonoy Lumber was the conjugal property of his parents Chua Chin and Chan Chi, who were both Chinese citizens. He narrated that, initially, his father leased the lots where Hagonoy Lumber is presently located from his godfather, Lu Pieng, and that his father constructed the two-storey concrete building standing thereon. According to Suy Ben, when he was in high school, it was his father who managed the business but he and his other siblings were helping him. Later, his sister, Sioc Huan, managed Hogonoy Lumber together with their other brothers and sisters. He stated that he also managed Hagonoy Lumber when he was in high school, but he stopped when he got married and found another job. He said that he now owns the lots where Hagonoy Lumber is operating.

On cross-examination, Concepcion explained that he ceased to be a stockholder of Capitol Sawmill when he sold his shares of stock to the other stockholders on January 1, 1991. He further testified that Sioc Huan acquired Hagonoy Lumber by virtue of a Deed of Partition,

executed by the heirs of Chua Chin. He, in turn, became the owner of Hagonoy Lumber when he bought the same from Sioc Huan through a Deed of Sale dated August 1, 1990. On re-direct examination, Concepcion stated that he sold his shares of stock in Capitol Sawmill for P254,000.00, which payment he received in cash. He also paid the purchase price of P255,000.00 for Hagonoy Lumber in cash, which payment was not covered by a separate receipt as he merely delivered the same to Sioc Huan at her house in Paso de Blas, Valenzuela. Although he maintains several accounts at Planters Bank, Paluwagan ng Bayan, and China Bank, the amount he paid to Sioc Huan was not taken from any of them. He kept the amount in the house because he was engaged in rediscounting checks of people from the public market.

Prior to the RTC Decision Antonio died due to cardio vascular and respiratory failure. Thereafter RTC ruled in favor of Suy Ben declaring that the latter is entitled to the payment of the amount of P200,000.00 with interest. The trial court further held that the validity and due execution of the Deed of Partition and the Deed of Sale, evidencing transfer of ownership of Hagonoy Lumber from Chua Sioc Huan to respondent, was never impugned. Although respondent failed to produce the originals of the documents, petitioner judicially admitted the due execution of the Deed of Partition, and even acknowledged her signature thereon, thus constitutes an exception to the best evidence rule. As for the Deed of Sale, since the contents thereof have not been put in issue, the non-presentation of the original document is not fatal so as to affect its authenticity as well as the truth of its contents. Also, the parties to the documents themselves do not contest their validity. Ultimately, petitioner failed to establish her right to demand an accounting of the operations of Hagonoy Lumber nor the delivery of her 1/6 share therein.

Concepcion appealed to the Court of Appeals (CA). The CA affirmed the decision of the RTC. The CA denied Concepcion's motion for reconsideration for lack of merit. Hence, this Petition for Review on Certiorari with the Supreme Court (SC).

Concepcion contends that her case was unduly prejudiced by the RTC's treatment of the Suy Ben's testimony as adverse witness during cross-examination by his own counsel as part of her evidence. Concepcion argues that the adverse witness' testimony elicited during cross-examination should not be considered as evidence of the calling party.

ISSUE:

1. Whether or not the adverse witness' testimony elicited during cross-examination should be considered as evidence of the calling party

2. Whether or Not the RTC erred in admitting in evidence a mere copy of the deed of partition and the deed of sale

RULING:

1. A party who calls his adversary as a witness is, therefore, not bound by the latter's testimony only in the sense that he may contradict him by introducing other evidence to prove a state of facts contrary to what the witness testifies on. A rule that provides that the party calling an adverse witness shall not be bound by his testimony does not mean that such testimony may not be given its proper weight, but merely that the calling party shall not be precluded from rebutting his testimony or from impeaching him. This, Concepcion failed to do.

In the present case, Concepcion, by her own testimony, failed to discredit the Suy Ben's testimony on how Hagonoy Lumber became his sole property. The petitioner admitted having signed the Deed of Partition, but she insisted that the transfer of the property to Sioc Huan was only temporary. On cross-examination, she confessed that no other document was executed to indicate that the transfer of the business to Sioc Huan was a temporary arrangement. She declared that, after their mother died in 1993, she did not initiate any action concerning Hagonoy Lumber, and it was only in her counterclaim in the instant that, for the first time, she raised a claim over the business.

Due process requires that in reaching a decision, a tribunal must consider the entire evidence presented. All the parties to the case, therefore, are considered bound by the favorable or unfavorable effects resulting from the evidence. As already mentioned, in arriving at a decision, the entirety of the evidence presented will be considered, regardless of the party who offered them in evidence. In this light, the more vital consideration is not whether a piece of evidence was properly attributed to one party, but whether it was accorded the apposite probative weight by the court. The testimony of an adverse witness is evidence in the case and should be given its proper weight, and such evidence becomes weightier if the other party fails to impeach the witness or contradict his testimony.

2. It is also worthy to note that both the Deed of Partition and the Deed of Sale were acknowledged before a Notary Public. The notarization of a private document converts it into a public document, and makes it admissible in court without further proof of its authenticity.[43] It is entitled to full faith and credit upon its face. A notarized document carries evidentiary weight as to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity. Such a document must be given full force and effect absent a strong, complete and conclusive proof of its falsity or nullity on account of some flaws or defects recognized by law. A public document executed and attested through the intervention of a notary public is, generally, evidence of the facts therein express in clear unequivocal manner.

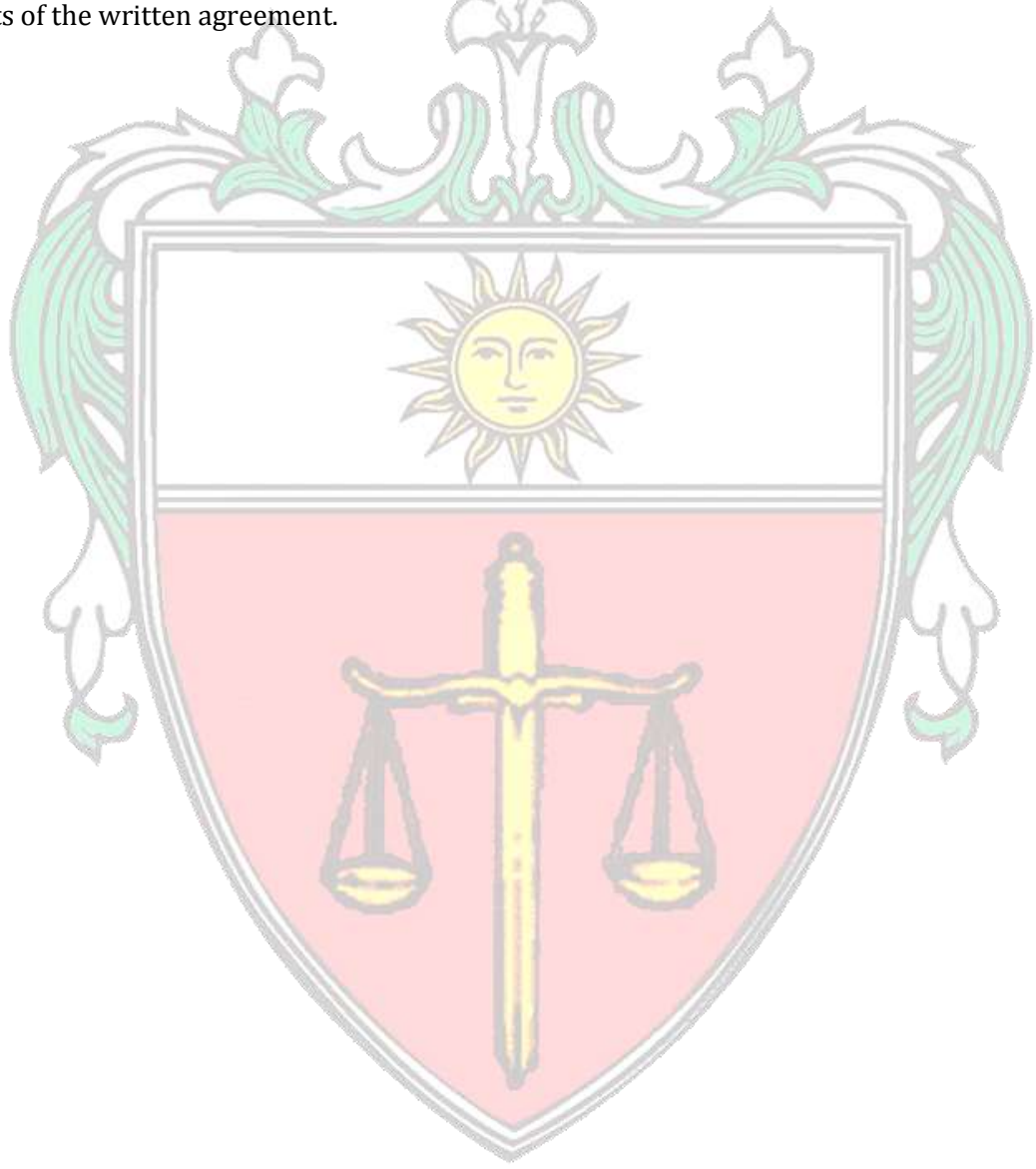
Petitioner, however, maintains that the RTC erred in admitting in evidence a mere copy of the Deed of Partition and the Deed of Sale in violation of the best evidence rule. In addition, petitioner insists that the Deed of Sale was not the result of *bona fide* negotiations between a true seller and buyer.

The "best evidence rule" as encapsulated in Rule 130, Section 3,[47] of the Revised Rules of Civil Procedure applies only when the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need to account for the original. Moreover, production of the original may be dispensed with, in the trial court's discretion, whenever *the opponent does not bona fide dispute the contents of the document* and no other useful purpose will be served by requiring production.

Accordingly, we find that the best evidence rule is not applicable to the instant case. Here, there was no dispute as to the terms of either deed; hence, the RTC correctly admitted in evidence mere copies of the two deeds. The petitioner never even denied their due execution and admitted that she signed the Deed of Partition. As for the Deed of Sale, petitioner had, in effect, admitted its genuineness and due execution when she failed to specifically deny it in the manner required by the rules. The petitioner merely claimed that said documents do not express the true agreement and intention of the parties since they were only provisional paper arrangements made upon the advice of counsel. Apparently, the petitioner does not contest the contents of these deeds but alleges that there

was a contemporaneous agreement that the transfer of Hagonoy Lumber to Chua Sioc Huan was only temporary.

An agreement or the contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. The parties' intention is to be deciphered from the language used in the contract, not from the unilateral *post facto* assertions of one of the parties, or of third parties who are strangers to the contract. Thus, when the terms of an agreement have been reduced to writing, it is deemed to contain all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.



DEPARTMENT OF EDUCATION CULTURE and SPORTS, *petitioner*, *vs.* JULIA DEL ROSARIO, MARIA DEL ROSARIO, PACENCIA DEL ROSARIO, and HEIRS OF SANTOS DEL ROSARIO, *respondents*.
G.R. No. 146586, January 26, 2005, FIRST DIVISION, CARPIO, *J.*

The best or primary evidence of a donation of real property is an authentic copy of the deed of donation with all the formalities required by Article 749 of the Civil Code; When a party wants to prove the contents of a document, the best evidence is the original writing itself. Secondary evidence of the contents of a document refers to evidence other than the original document itself; The correct order of proof is as follows: existence, execution, loss, contents, although the court in its discretion may change this order if necessary. Prior to the introduction of secondary evidence, a party must establish the existence and due execution of the instrument, after which he must prove that the document was lost or destroyed.

FACTS:

Respondents filed a complaint for recovery of possession against DECS, alleging that they own a property in Kaypombo, Sta. Maria, Bulacan, wherein the Kaypombo Primary School Annex (KPPS) was occupying a portion thereof through their and their predecessors-in-interests' tolerance. They allege that KPPS refused to vacate despite their valid demands to do so.

DECS claims that sometime in 1959, Isias Del Rosario, respondents' father, donated a portion of the property to the Municipality of Sta. Maria for school site purposes. The deed and acceptance was prepared by Atty. Natividad. KPPS started occupying the donated site in 1962. Thus, DECS now claims ownership of the donated site. In fact, It renamed the school as Isaias Del Rosario Primary School.

There was no dispute that the property was registered in the name of respondents; hence. The parties agreed to a reverse trial with DECS presenting Nicolas, De Jesus and Judge Natividad as witnesses to prove that there was a valid donation to the municipality.

Nicolas: witnessed Isaias and then Mayor Ramos sign the deed of donation in favor of the municipality, which was made in the presence of Judge Natividad.

De Jesus: In 1991, the barangay council and Isaias' children had a meeting in the presence of Judge Natividad who informed them that the land was donated by their father. The children agreed but requested that the school be renamed after their father. The council tried to secure a copy of the deed from the municipality but, according to the people in the municipal hall, the deed got lost when they transferred to the new municipal bldg. The DECS office in Malolos could likewise not find a copy of the deed.

Judge Natividad: In 1961, while he was still a municipal councilor, Isaias, his relative, came to him and told him that he was willing to donate a portion of the lot for a school site, as he saw the plight of small pupils in their place. He also testified that he prepared the deed which was signed by Isaias in his residence and accepted by the municipality through a resolution, a copy of which could not be found due to the transfer of the municipal hall from he old to the new bldg.

RTC dismissed the complaint, stating that the defense was able to prove the due execution of the deed of donation and its acceptance, as well as the loss of the same, in accordance with Sec. 4, Rule 130. It

stated the rule that a recantation/recollection of witness is a form of secondary evidence to prove the existence/content of a document. Since the loss of the deed subject matter of this case was likewise duly proved by the defense, exerting the best possible efforts to locate or secure a copy of the same and without bad faith on its part, it is bent to give a greater weight to the secondary evidence adduced by the defense vis-à-vis the title in the name of the Del Rosarios, most particularly in this case, where the they failed to make it appear that other and more secondary evidence is known to DECS and can be produced by them.

CA reversed, holding that DECS failed to prove the existence and due execution of the deed of donation as well as the Resolution of the municipal council accepting the donation. It was not fully satisfied that DECS or the Municipality had made a diligent search of the alleged "lost" deed of donation. MR denied.

ISSUE:

Whether or Not the DECS failed to prove the due execution of the DoD and the resolution of the municipal council accepting the donation, as well as the loss of the documents as the cause of their unavailability – YES.

RULING:

Article 749 of the Civil Code requires that the donation of real property must be made in a public instrument. Otherwise, the donation is void.

The best or primary evidence of a donation of real property is an authentic copy of the deed of donation with all the formalities required by Article 749 of the Civil Code. The duty to produce the original document arises when the subject of the inquiry are the contents of the writing in which case there can be no evidence of the contents of the writing other than the writing itself. Simply put, when a party wants to prove the contents of the document, the best evidence is the original writing itself.

A party may prove the donation by other competent or secondary evidence under the exceptions in Sec. 3, Rule 130, and Sec. 5, Rule 130 in relation thereto.

Secondary evidence of the contents of a document refers to evidence other than the original document itself. A party may introduce secondary evidence of the contents of a written instrument not only when the original is lost or destroyed, but also when it cannot be produced in court, provided there is no bad faith on the part of the offeror. However, a party must first satisfactorily explain the loss of the best or primary evidence before he can resort to secondary evidence. A party must first present to the court proof of loss or other satisfactory explanation for non-production of the original instrument. The correct order of proof is as follows: existence, execution, loss, contents, although the court in its discretion may change this order if necessary.

While Nicolas' testimony may have established to some extent the existence of the deed as he witnessed the signing of the document, during cross, Nicolas admitted that he did not read and did not have personal knowledge of the contents of the document that Isaias and the mayor supposedly signed.

In the same vein, De Jesus' testimony does not help to establish the deed of donation's existence, execution and contents. He testified that he never saw the deed of donation. On cross, he admitted

that the information that Isaias donated the lot to the Municipality was only relayed to him by Judge Natividad himself to establish the loss of the deed of donation.

DECS did not introduce in evidence the municipal council Resolution accepting the donation. There is also no proof that the donee communicated in writing its acceptance to the donor aside from the circumstance that DECS constructed the school during Isaias' lifetime without objection on his part. There is absolutely no showing that these steps were noted in both instruments.

Prior to the introduction of secondary evidence, a party must establish the existence and due execution of the instrument. After a party establishes the existence and due execution of the document, he must prove that the document was lost or destroyed.

DECS allegedly made a search in the municipal building and in the DECS Division Office in Bulacan. The copies of the deed of donation furnished these offices were purportedly "lost" when these offices transferred to new locations. However, as the CA correctly pointed out, Judge Natividad who claimed to have notarized the deed of donation failed to account for other copies of the deed, which the law strictly enjoins him to record, and furnish to other designated government offices.

The Notarial Law mandates a notary public to record in his notarial register the necessary information regarding the instrument acknowledged before him. The Notarial Law also mandates the notary public to retain a copy of the instrument acknowledged before him when it is a contract. The notarial register is a record of the notary public's official acts. Acknowledged instruments recorded in the notarial register are public documents. If the instrument is not recorded in the notarial register and there is no copy in the notarial records, the presumption arises that the document was not notarized and is not a public document.

DECS should have produced at the trial the notarial register where Judge Natividad as the notary public should have recorded the deed of donation. Alternatively, DECS should have explained the unavailability of the notarial register. Judge Natividad could have also explained why he did not retain a copy of the deed of donation as required by law. As the Court of Appeals correctly observed, there was no evidence showing that DECS looked for a copy from the Clerk of Court concerned or from the National Archives. All told, these circumstances preclude a finding that DECS or the Municipality made a diligent search to obtain a copy of the deed of donation.

ROGELIO DANTIS, *Petitioner*, *v.* JULIO MAGHINANG, JR., *Respondent.*
G.R. No. 191696, April 10, 2013 THIRD DIVISION MENDOZA, *J.*

The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence.

FACTS:

Petitioner Dantis filed a complaint for quieting of title and recovery of possession against Respondent Maghinang. Petitioner alleged that he was the registered owner of subject land, acquiring such thru an extrajudicial partition of the estate from his deceased father. That respondent built a house on a part of his estate; that his demands for respondent to vacate were unheeded.

Respondent Julio denied the allegations. He said that his father bought the land from the Petitioner's father and that he has succeeded to its ownership. He also claims that he was entitled to a separate registration of said lot on the basis of the documentary evidence of sale, and his open and uninterrupted possession of the property.

Defendant presented the ff evidence to prove the sale of land to his father:

Exhibit 3 – affidavit executed by Ignacio Dantis, grandfather of the Petitioner of the agreement to sell such land

Exhibit 4 – an undated handwritten receipt evidencing downpayment for said lot

But defendant admitted that the affidavit was not signed by the alleged vendor, Emilio Dantis, the father of petitioner. Also, he admitted that the receipt he presented was admittedly a mere photocopy.

RTC rendered its decision in favor of petitioner. RTC found that the documents would only serve as proofs that the purchase price for the subject lot had not yet been completely paid and, hence, Rogelio was not duty-bound to deliver the property to Julio, Jr. The RTC found Julio, Jr. to be a mere possessor by tolerance.

CA ruled in favor of Defendant Maghinang. It held that the undated receipt was proof of the sale of the lot. It also ruled that the partial payment of the purchase price, coupled with the delivery gave efficacy to the oral sale, and that Petitioner was duty-bound to convey what had been sold after full payment of the selling price.

ISSUE:

Whether or Not the pieces of evidence (affidavit and photocopy of the receipt) submitted by the defendant are adequate proofs of the existence of the alleged oral contract of sale of the lot in dispute.

RULING:

No.

Exhibit "3," the affidavit of Ignacio, is hearsay evidence and, thus, cannot be accorded any evidentiary weight. Evidence is hearsay when its probative force depends on the competency and credibility of some persons other than the witness by whom it is sought to be produced. The exclusion of hearsay evidence is anchored on three reasons: 1) absence of cross-examination; 2) absence of demeanor evidence; and 3) absence of oath. The affidavit was not identified and its averments were not affirmed by affiant Ignacio. Accordingly, it must be excluded from the judicial proceedings being an inadmissible hearsay evidence.

Exhibit "4," the undated handwritten receipt, is considered secondary evidence being a mere photocopy which cannot be admitted to prove the contents of the document. The best evidence rule requires that the highest available degree of proof must be produced. For documentary evidence, the contents of a document are best proved by the production of the document itself to the exclusion of secondary or substitutionary evidence, pursuant to Rule 130, Section 3.

A secondary evidence is admissible only upon compliance with Rule 130, Section 5, which states that: when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

In the case, Defendant failed to prove the due execution of the original of Exhibit "4" as well as its subsequent loss. Also, his testimony was riddled with improbabilities and contradictions which raise doubt on the veracity of his evidence. When asked where the original was, Defendant's testimony gave the impression that the original of the document was lost while it was in the possession of his parents. During cross-examination, however, he testified that it was lost while it was in his possession. Further, Exhibit 4 would not be an adequate proof of the existence of the alleged oral contract of sale because it failed to provide a description of the subject lot, including its metes and bounds, as well as its full price or consideration.

PEOPLE OF THE PHILIPPINES, Appellee, vs. NOEL ENOJAS y HINGPIT, ARNOLD GOMEZ y FABREGAS, FERNANDO SANTOS y DELANTAR, and ROGER JALANDONI y ARI, Appellants. G.R. No. 204894 March 10, 2014 THIRD DIVISION ABAD, *J.*

As to the admissibility of the text messages, the RTC admitted them in conformity with the Court's earlier Resolution applying the Rules on Electronic Evidence to criminal actions. Text messages are to be proved by the testimony of a person who was a party to the same or has personal knowledge of them.

FACTS:

PO2 Gregorio and PO2 Pangilinan were patrolling the vicinity of Toyota Alabang and SM Southmall when they spotted a suspiciously parked taxi. They approached the taxi driver Enojas and asked for his documents. Having entertained doubts regarding the veracity of documents shown them, they invited him in their mobile car to the police station for further questioning. Enojas complied leaving his taxi behind. Upon reaching 7-11 on Zapote-Alabang Road, they stopped and PO2 Pangilinan went down to relieve himself there. As he approached the store's door, however, he came upon two suspected robbers and a shootout ensued. PO2 Pangilinan shot one suspect dead and hit the other who still managed to escape. But someone fired at PO2 Pangilinan causing his death. PO2 Gregorio was also engaged in a shootout with two more armed robbers who managed to escape. He then went back to the patrol car and noticed that Enojas fled. Suspecting that Enojas was involved in the attempted robbery, they searched his abandoned taxi and found a mobile phone apparently left behind by Enojas. The police officers monitored the incoming messages and posed as Enojas. The accused appellants were later on arrested in an entrapment operation and were convicted of murder by RTC Las Pinas.

ISSUES:

1. Whether or not the evidence of the text messages were inadmissible, not having been properly identified.

2. Whether or not circumstantial evidence alone is sufficient to attain a conviction.

RULING:

1. As to the admissibility of the text messages, the RTC admitted them in conformity with the Court's earlier Resolution applying the Rules on Electronic Evidence to criminal actions. Text messages are to be proved by the testimony of a person who was a party to the same or has personal knowledge of them. Here, PO3 Cambi, posing as the accused Enojas, exchanged text messages with the other accused in order to identify and entrap them. As the recipient of those messages sent from and to the mobile phone in his possession, PO3 Cambi had personal knowledge of such messages and was competent to testify on them.

2. This may be true but the prosecution could prove their liability by circumstantial evidence that meets the evidentiary standard of proof beyond reasonable doubt. It has been held that circumstantial evidence is sufficient for conviction if: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Here the totality of the circumstantial evidence the prosecution presented sufficiently provides basis for the conviction of all the accused.

MCC INDUSTRIAL SALES CORPORATION, ***petitioner*, vs.**
SSANGYONG CORPORATION, *respondents.*
G.R. No. 170633 October 17, 2007 THIRD DIVISION NACHURA, *J.*

The definitions under the Electronic Commerce Act of 2000, its IRR and the Rules on Electronic Evidence, at first glance, convey the impression that facsimile transmissions are electronic data messages or electronic documents because they are sent by electronic means. The expanded definition of an "electronic data message" under the IRR, consistent with the UNCITRAL Model Law, further supports this theory considering that the enumeration "xxx [is] not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy." And to telecopy is to send a document from one place to another via a fax machine.

FACTS:

Petitioner MCC Industrial Sales (MCC), a domestic corporation with office at Binondo, Manila, is engaged in the business of importing and wholesaling stainless steel products. One of its suppliers is the Ssangyong Corporation (Ssangyong), an international trading company with head office in Seoul, South Korea and regional headquarters in Makati City, Philippines. The two corporations conducted business through telephone calls and facsimile or telecopy transmissions. Ssangyong would send the *pro forma* invoices containing the details of the steel product order to MCC; if the latter conforms thereto, its representative affixes his signature on the faxed copy and sends it back to Ssangyong, again by fax.

Following the failure of MCC to open a letters of credit to facilitate the payment of imported stainless steel products, Ssangyong through counsel wrote a letter to MCC, on September 11, 2000, canceling the sales contract under ST2-POSTS0401-1 /ST2-POSTS0401-2, and demanding payment of US$97,317.37 representing losses, warehousing expenses, interests and charges.

Ssangyong then filed, on November 16, 2001, a civil action for damages due to breach of contract against defendants MCC, Sanyo Seiki and Gregory Chan before the Regional Trial Court of Makati City. In its complaint, Ssangyong alleged that defendants breached their contract when they refused to

open the L/C in the amount of US$170,000.00 for the remaining 100MT of steel under *Pro Forma* Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2.

After Ssangyong rested its case, defendants filed a Demurrer to Evidence alleging that Ssangyong failed to present the original copies of the *pro forma* invoices on which the civil action was based. In an Order dated April 24, 2003, the court denied the demurrer, ruling that the documentary evidence presented had already been admitted in the December 16, 2002 Orde and their admissibility finds support in Republic Act (R.A.) No. 8792, otherwise known as the Electronic Commerce Act of 2000. According to the aforesaid Order, considering that both testimonial and documentary evidence tended to substantiate the material allegations in the complaint, Ssangyong's evidence sufficed for purposes of a *prima facie* case.

ISSUE:

Whether the print-out and/or photocopies of facsimile transmissions are electronic evidence and admissible in evidence as such?

RULING:

R.A. No. 8792, otherwise known as the Electronic Commerce Act of 2000, considers an electronic data message or an electronic document as the functional equivalent of a written document for evidentiary purposes. The Rules on Electronic Evidence regards an electronic document as admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws, and is authenticated in the manner prescribed by the said Rules. An electronic document is also the equivalent of an original document under the Best Evidence Rule, if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

Thus, to be admissible in evidence as an electronic data message or to be considered as the functional equivalent of an original document under the Best Evidence Rule, the writing must foremost be an "electronic data message" or an "electronic document."

In an ordinary facsimile transmission, there exists an original paper-based information or data that is scanned, sent through a phone line, and re-printed at the receiving end. Be it noted that in enacting the Electronic Commerce Act of 2000, Congress intended virtual or paperless writings to be the functional equivalent and to have the same legal function as paper-based documents. Further, in a virtual or paperless environment, technically, there is no original copy to speak of, as all direct printouts of the virtual reality are the same, in all respects, and are considered as originals. Ineluctably, the law's definition of "electronic data message," which, as aforesaid, is interchangeable with "electronic document," could not have included facsimile transmissions, which have an original paper-based copy as sent and a paper-based facsimile copy as received. These two copies are distinct from each other, and have different legal effects. While Congress anticipated future developments in communications and computer technology when it drafted the law, it excluded the early forms of technology, like telegraph, telex and telecopy (except computer-generated faxes, which is a newer development as compared to the ordinary fax machine to fax machine transmission), when it defined the term "electronic data message."We, therefore, conclude that the terms "electronic data message" and "electronic document," as defined under the Electronic Commerce Act of 2000, do not include a facsimile transmission. Accordingly, a facsimile transmission cannot be considered as electronic evidence. It is not the functional equivalent of an original under the Best Evidence Rule and is not admissible as electronic evidence.

Since a facsimile transmission is not an "electronic data message" or an "electronic document," and cannot be considered as electronic evidence by the Court, with greater reason is a photocopy of such a fax transmission not electronic evidence. In the present case, therefore, Pro Forma Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2 (Exhibits "E" and "F"), which are mere photocopies of the original fax transmittals, are not electronic evidence, contrary to the position of both the trial and the appellate courts.

ACI PHILIPPINES, INC., *Petitioner*, *v.*EDITHA C. COQUIA, DOING BUSINESS IN THE NAME OF E. CARDOZO COQUIA ENTERPRISE, *Respondent*.
G.R. NO. 174466 : July 14, 2008 SECOND DIVISION TINGA, *J.*

Section. 9, Rule 130 of the Rules of Court states that a party may present evidence to modify, explain or add to the terms of the agreement if he puts in issue in his pleading the failure of the written agreement to express the true intent and agreement of the parties. Since an exception to the parol evidence rule was squarely raised as an issue in the answer, the trial court should not have been so inflexible as to completely disregard petitioner's evidence.

FACTS:

Petitioner ACI Philippines, Inc. (ACI) contracted with respondent Coquia for the purchase of one lot of flint cullets, consisting of 2,500 to 3,000 metric tons, at a price of P4.20 per kilo under Purchase Order No. 106211. Several deliveries made by respondent were accepted and paid for by petitioner at the unit price of P4.20 per kilo as indicated in Purchase Order No. 106211. However, petitioner demanded the reduction of the purchase price to P3.65 per kilo, to which respondent acceded. Petitioner accordingly issued Purchase Order No. 106373, and deliveries were again made by respondent on 5, 8 and 12 November 1994 under Delivery Receipt Nos. 901, 719 and 735, respectively. Petitioner accepted the deliveries but refused to pay for them even at the reduced price of P3.65 per kilo, demanding instead that the unit price be further reduced to P3.10 per kilo.

Respondent filed a Complaint for specific performance and damages against petitioner seeking payment for the deliveries made under Delivery Receipt Nos. 901, 719 and 735, amounting to 46,390 kilos at the renegotiated price of P3.65 per kilo. The trial court ruled in favor of the respondent. CA affirmed the decision of the trial court but further held that Purchase Order No. 106211 is a contract of adhesion whose terms must be strictly construed against petitioner. It also deemed as contrary to the original agreement, which pegged the unit price of flint cullets at P4.20 per kilo, petitioner's willful refusal to pay for the deliveries unless the price is reduced, for which petitioner should be held liable. The appellate court denied petitioners Partial Motion for Reconsideration, as well as respondents Urgent *Ex Parte* Application for Attachment.

Petitioner claims that the CA erred in ruling that Purchase Order No. 106211 is a contract of adhesion despite the fact that respondent is an established businesswoman who has the freedom to negotiate the terms and conditions of any contract she enters into. It stresses that Purchase Order No. 106211 was superseded by Purchase Order No. 106373 and that, in both contracts, it was made clear to respondent that her assurance of prompt delivery of the flint cullets motivated the transaction. Petitioner maintains that it entered into a contract with respondent upon the latter's assurance that she could promptly deliver the 2,500-3,000 metric tons of flint cullets required by petitioner. However, it believes that the trial court and the appellate court erroneously refused to receive evidence *aliunde* to prove that time was an important element of the agreement.

ISSUE:

Whether the trial court and the appellate court erroneously refused to receive evidence *aliunde* to prove that time was an important element of the agreement

RULING:

YES. A contract of adhesion is one wherein a party, usually a corporation, prepares the stipulations in the contract, and the other party merely affixes his signature or his "adhesion" thereto. There is every indication in this case that respondent, a presumably astute businesswoman who has dealings with big corporations, gave her assent to Purchase Order No. 106211 with full knowledge. She was, in fact, the one who sought a contract with petitioner upon learning of the latter's need for a supply of flint cullets. The Court cannot, therefore, apply the rule on contracts of adhesion in construing the provisions of the purchase orders in this case. Even the conditions of purchase, enumerated at the reverse side of the purchase orders, do not reveal any hint of one-sidedness in favor of petitioner. Petitioner raised the failure of the purchase order to express the true intent of the parties, *i.e.,* that petitioner entered into a contract with respondent conditioned upon the latter's prompt delivery of flint cullets, as an issue in its Answer with Counterclaims. Unfortunately, the trial court sustained respondents objection based on the parol evidence rule.

It is a cardinal rule of evidence, not just one of technicality but of substance, that the written document is the best evidence of its own contents. It is also a matter of both principle and policy that when the written contract is established as the repository of the parties stipulations, any other evidence is excluded and the same cannot be used as a substitute for such contract, nor even to alter or contradict them. This rule, however, is not without exception. Section. 9, Rule 130 of the Rules of Court states that a party may present evidence to modify, explain or add to the terms of the agreement if he puts in issue in his pleading the failure of the written agreement to express the true intent and agreement of the parties. Since an exception to the parol evidence rule was squarely raised as an issue in the answer, the trial court should not have been so inflexible as to completely disregard petitioner's evidence.

Sifting through the testimony of respondent, the Court finds that although she was not given definite days during which she should deliver the flint cullets, she was indeed apprised of petitioners urgent need for large quantities thereof. Furthermore, petitioner presented the unrebutted testimony of Ermilinda Batalon, its materials control manager, to prove that it agreed to the P4.20 per kilo purchase price only because respondent assured it of prompt deliveries sufficient for petitioners production requirements. These testimonies give a more complete picture of the transaction between the parties and allow for a more reasoned resolution of the issues, without over-reliance on the tenuous application of the rule on contracts of adhesion.

SEAOIL PETROLEUM CORPORATION, *Petitioners*, *v.* AUTOCORP GROUP and PAUL Y. RODRIGUEZ, *Respondents*.
G.R. NO. 164326 : October 17, 2008 NACHURA, *J.*

Although parol evidence is admissible to explain the meaning of a contract, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in the writing unless there has been fraud or mistake. Evidence of a prior or contemporaneous verbal

agreement is generally not admissible to vary, contradict or defeat the operation of a valid contract. The Vehicle Sales Invoice is the best evidence of the transaction.

FACTS:

Seaoil Petroleum Corporation (Seaoil, for brevity) purchased one unit Excavator, Model 1994 from Autocorp Group (Autocorp for short). The original cost of the unit was ₱2,500,000.00 but was increased to ₱3,112,519.94 because it was paid in 12 monthly installments up to September 30, 1995.

CONTRACTS ISSUED:

Vehicle Sales Invoice (Seaoil that owes Autocorp)
Lease Purchase Agreement (UNILINE incurred obligations to FOCUS

Both documents were signed by Francis Yu, president of Seaoil, on behalf of said corporation. Furthermore, it was agreed that despite delivery of the excavator, ownership thereof was to remain with Autocorp until the obligation is fully settled.

Seaoils contractor, Romeo Valera, issued 12 postdated checks. However, Autocorp refused to accept the checks because they were not under Seaoils name. Hence, Yu, on behalf of Seaoil, signed and issued 12 postdated checks for ₱259,376.62 each with Autocorp as payee.

The excavator was subsequently delivered and was received by Seaoil in its depot in Batangas.

The relationship started to turn sour when the first check bounced. However, it was remedied when Seaoil replaced it with a good check. The second check likewise was also good when presented for payment. However, the remaining 10 checks were not honored by the bank since Seaoil requested that payment be stopped. It was downhill from thereon.

Despite repeated demands, Seaoil refused to pay the remaining balance of ₱2,593,766.20. Hence, Autocorp filed a complaint for recovery of personal property with damages and replevin in the Regional Trial Court of Pasig.

Seaoil, claims that Seaoil and Autocorp were only utilized as conduits to settle the obligation of one foreign entity named UNILINE in favor of another foreign entity, FOCUS Point International, Incorporated

PAUL RODRIGUEZ =
stockholder and director of Autocorp.
owner of UNILINE (OWNED BY RODRIGUEZ/AUTOCORP) (FOREIGN ENTITY)

FRANCIS YU =
president and stockholder of Seaoil.
owner of FOCUS (Owned by YU/SEAOIL). (FOREIGN ENTITY)

UNILINE (OWNED BY RODRIGUEZ/AUTOCORP) chartered MV Asia Property (sic) in the amount of $315,711.71 from its owner FOCUS (Owned by YU/SEAOIL).
UNILINE (OWNED BY RODRIGUEZ/AUTOCORP) was not able to settle the said amount. Hence, UNILINE (OWNED BY RODRIGUEZ/AUTOCORP), through Rodriguez, proposed to settle the obligation through conveyance of vehicles and heavy equipment.

Consequently, four units of Tatamobile pick-up trucks procured from AUTOCORP were conveyed to FOCUS (Owned by YU/SEAOIL) as partial payment. The excavator in controversy was allegedly one part of the vehicles conveyed to FOCUS (Owned by YU/SEAOIL). Seaoil claims that Rodriguez initially issued 12 postdated checks in favor of Autocorp as payment for the excavator. However, due to the fact that it was company policy for Autocorp not to honor postdated checks issued by its own directors, Rodriguez requested Yu to issue 12 PBCOM postdated checks in favor of Autocorp. In turn, said checks would be funded by the corresponding 12 Monte de Piedad postdated checks issued by Rodriguez. These Monte de Piedad checks were postdated three days prior to the maturity of the PBCOM checks.

Seaoil claims that Rodriguez issued a stop payment order on the ten checks thus constraining the former to also order a stop payment order on the PBCOM checks.

In short, Seaoil claims that the real transaction is that UNILINE owed money to FOCUS (Owned by YU/SEAOIL).

In lieu of payment, UNILINE (OWNED BY RODRIGUEZ/AUTOCORP) instead agreed to convey the excavator to FOCUS (Owned by YU/SEAOIL). This was to be paid by checks issued by Seaoil but which in turn were to be funded by checks issued by UNILINE (OWNED BY RODRIGUEZ/AUTOCORP).

TRIAL COURT = ruled for Autocorp. IT ruled that the transaction between Autocorp and Seaoil was a simple contract of sale payable in installments. It also held that the obligation to pay plaintiff the remainder of the purchase price of the excavator solely devolves on Seaoil. Paul Rodriguez, not being a party to the sale of the excavator, could not be held liable therefor.

CA. affirmed the RTCs Decision *in toto*.

It held that the transaction between Yu and Rodriguez was merely verbal. This cannot alter the sales contract between Seaoil and Autocorp as this will run counter to the parol evidence rule which prohibits the introduction of oral and parol evidence to modify the terms of the contract. The claim that it falls under the exceptions to the parol evidence rule has not been sufficiently proven. Moreover, it held that Autocorps separate corporate personality cannot be disregarded and the veil of corporate fiction pierced.

Seaoil was not able to show that Autocorp was merely an alter ego of UNILINE (OWNED BY RODRIGUEZ/AUTOCORP) or that both corporations were utilized to perpetrate a fraud.

it held that the RTC was correct in dismissing the third-party complaint since it did not arise out of the same transaction on which the plaintiffs claim is based, or that the third partys claim, although arising out of another transaction, is connected to the plaintiffs claim. Besides, the CA said, such claim may be enforced in a separate action.

ISSUE:

Whether or not the Court of Appeals erred in partially applying the parol evidence rule to prove only some terms contained in one portion of the document but disregarded the rule with respect to another but substantial portion or entry also contained in the same document which should have proven the true nature of the transaction involved.

RULING:

We find no fault in the trial courts appreciation of the facts of this case. The findings of fact of the trial court are conclusive upon this Court, especially when affirmed by the CA. None of the exceptions to this well-settled rule has been shown to exist in this case.

SEAOIL does not question the validity of the vehicle sales invoice but merely argues that the same does not reflect the true agreement of the parties. However, SEAOIL only had its bare testimony to back up the alleged arrangement with Rodriguez.

The Monte de Piedad checks the supposedly clear and obvious link between the documentary evidence and the true transaction between the parties are equivocal at best. There is nothing in those checks to establish such link. Rodriguez denies that there is such an agreement.

Unsubstantiated testimony, offered as proof of verbal agreements which tends to vary the terms of a written agreement, is inadmissible under the parol evidence rule.[8]

Rule 130, Section 9 of the Revised Rules on Evidence embodies the parol evidence rule and states:

SEC. 9. *Evidence of written agreements.*When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.

The term "agreement" includes wills.

The parol evidence rule forbids any addition to, or contradiction of, the terms of a written agreement by testimony or other evidence purporting to show that different terms were agreed upon by the parties, varying the purport of the written contract.

This principle notwithstanding, SEAOIL would have the Court rule that this case falls within the exceptions, particularly that the written agreement failed to express the true intent and agreement of the parties. This argument is untenable.

Although parol evidence is admissible to explain the meaning of a contract, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in the writing unless there has been fraud or mistake. Evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict or defeat the operation of a valid contract.

The Vehicle Sales Invoice is the best evidence of the transaction. A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions.[13] Business forms, *e.g.*, order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least, they serve as an acknowledgment that a business transaction has in fact transpired.[14] These documents are not mere scraps of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts.

The terms of the subject sales invoice are clear. They show that Autocorp sold to Seaoil one unit Robex 200 LC Excavator paid for by checks issued by one Romeo Valera. This does not, however, change the fact that Seaoil Petroleum Corporation, as represented by Yu, is the customer or buyer. The moment a party affixes his or her signature thereon, he or she is bound by all the terms stipulated therein and is subject to all the legal obligations that may arise from their breach.

Oral testimony on the alleged conditions, coming from a party who has an interest in the outcome of the case, depending exclusively on human memory, is not as reliable as written or documentary evidence.[17]

Hence, SEAOILs contention that the document falls within the exception to the parol evidence rule is untenable. The exception obtains only where the written contract is so *ambiguous or obscure* in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument. In such a case, extrinsic evidence of the subject matter of the contract, of the relations of the parties to each other, and of the facts and circumstances surrounding them when they entered into the contract may be received to enable the court to make a proper interpretation of the instrument.[18]

Rodriguez is a person separate and independent from Autocorp. Whatever obligations Rodriguez contracted cannot be attributed to Autocorp and vice versa. In fact, the obligation that SEAOIL proffers as its defense under the Lease Purchase Agreement was not even incurred by Rodriguez or by Autocorp but by UNILINE (OWNED BY RODRIGUEZ/AUTOCORP).

The Lease Purchase Agreement clearly shows that the parties thereto are two corporations not parties to this case: FOCUS and UNILINE. Under this Lease Purchase Agreement, it is UNILINE and

not Rodriguez, that incurred the debt to FOCUS Point. The obligation of UNILINE to FOCUS arose out of a transaction completely different from the subject of the instant case.

It is settled that a corporation has a personality separate and distinct from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. The corporation may not be held liable for the obligations of the persons composing it, and neither can its stockholders be held liable for its obligation.

To reiterate, the transaction under the Vehicle Sales Invoice is separate and distinct from that under the Lease Purchase Agreement. In the former, it is Seaoil that owes Autocorp, while in the latter, UNILINE incurred obligations to FOCUS. There was never any allegation, much less any evidence, that Autocorp was merely an alter ego of UNILINE (OWNED BY RODRIGUEZ/AUTOCORP), or that the two corporations separate personalities were being used as a means to perpetrate fraud or wrongdoing.

A last point. We reject Seaoils claim that the ownership of the subject excavator, having been legally and completely transferred to FOCUS (Owned by YU/SEAOIL) Point International, Inc., cannot be subject of replevin and plaintiff [herein respondent Autocorp] is not legally entitled to any writ of replevin.[30] The claim is negated by the sales invoice which clearly states that [u]ntil after the vehicle is fully paid inclusive of bank clearing time, it remains the property of Autocorp Group which reserves the right to take possession of said vehicle at any time and place without prior notice.[31]

Considering, first, that FOCUS Point was not a party to the sale of the excavator and, second, that Seaoil indeed failed to pay for the excavator in full, the same still rightfully belongs to Autocorp. Additionally, as the trial court found, Seaoil had already assigned the same to its contractor for the construction of its depot in Batangas. Hence, Seaoil has already enjoyed the benefit of the transaction even as it has not complied with its obligation. It cannot be permitted to unjustly enrich itself at the expense of another.

SALUN-AT MARQUEZ and NESTOR DELA CRUZ, *Petitioners,* vs. ELOISA ESPEJO, ELENITA ESPEJO, EMERITA ESPEJO, OPHIRRO ESPEJO, OTHNIEL ESPEJO, ORLANDO ESPEJO, OSMUNDO ESPEJO, ODELEJO ESPEJO and NEMI FERNANDEZ, *Respondents.*
G.R. No. 168387 August 25, 2010 FIRST DIVISION DEL CASTILLO, *J.*

FACTS:

Respondent Espejos were the original owners of 2 parcels of land - Lantap Property and Murong Property. The former (LP) was tenanted by respondent Nemi Fernandez, husband of respondent Elenita Espejo, while the latter (MP) is tenanted by petitioners Marquez and dela Cruz.

The respondents mortgaged both properties to Rural Bank of Bayombong, Inc (RBBI). Upon failure to pay the loans, the said properties were foreclosed and sold to RBBI. Transfer certificate titles were issued in the name of the said bank.

TCT No. T-62096 for Murong Property
TCT No. T- 62836 for the Lantap Property

After a month, Respondent Espejos bought back one of their lots from RBBI. The lot that they want to repurchase is the Lantap Property, which was still tenanted by respondent Nemi Fernandez. However, the Deed of Sale mentioned TCT No. 62096 as the subject property which refers to the Murong Property, which was still tenanted by the petitioners.

Meanwhile, pursuant to RA 6657, RBBI executed separate Deed of Voluntary Land Transfer (VLT) in favor of petitioners Marquez and dela Cruz. Both the VLTs mentioned an agricultural land located in Brgy. Murong as the subject property but the TCT No. Or the the title mentioned therein refers to the Lantap Property. Certificate of Land Ownership Awards (CLOAs) were issued.

After more than 10 years, respondents filed a complaint before the Regional Agrarian reform Adjudicator (RARAD) for the cancellation of petitioners' CLOAs. Petitioners answered, insisting, that they bought the Murong property as farmer-beneficiaries and that the property that was repurchased by the respondents was actually the Lantap property as evidenced by the continued occupation of respondent Nemi Fernandez therein. RBBI, also, answered that it was, indeed, the Lantap Property which was subject of the buy-back transaction with the respondents.

The OIC- RARAD gave precedence to the TCT numbers which appeared on the Deed of Sale, VLTs and CLOAs. Since TCT no. T- 62096 appeared on respondents' deed of sale, which refers to Murong Property, the subject of sale is, indeed, the Murong Property. On the other hand, since TCT No. T-62836 appeared on petitioners' VLTs and CLOAs, which refers to Lantap Property, the subject of sale is, indeed, the Lantap property.

Upon appeal, DARAB reversed the decision of the OIC- RARAD. It ruled that the presumption of regular performance of duty prevails. Therefore, since petitioners are the actual tillers of the Murong Property, which was admitted by the respondents, hence, the petitioners are the qualified beneficiaries thereof.

However, the CA did not agree with the RARAD's decision. It ruled that, using the Best Evidence Rule - Rule 130, Sec. 3, the Deed of Sale is the best evidence as to its contents, particularly the description of the land which was the object of the sale. Since the Deed of Sale expressed that its subject is the land covered by TCT No. T-62096 the Murong property then that is the property that the respondents repurchased. As for petitioners VLTs, the same refer to the property with TCT No. T-62836; thus, the subject of their CLOAs is the Lantap property. The additional description in the VLTs that the subject thereof is located in Barangay Murong was considered to be a mere typographical error. The CA ruled that the technical description contained in the TCT is more accurate in identifying the subject property since the same particularly describes the properties metes and bounds. Hence, the appeal to the SC.

Petitioners argue that the CA erred in using the best evidence rule to determine the subject of the Deed of Sale, VLTs and CLOAs. They maintain that the issue in the case is not the contents of the contracts but the intention of the parties that was not adequately expressed in their contracts. Moreover, they argue that it is the Parol Evidence Rule that should be applied in order to adequately resolve the dispute.

ISSUE:

Whether or not the CA erred in applying the Best Evidence Rule in the case.

RULING:

Yes. The CA erred in its application of the Best Evidence Rule. The Best Evidence Rule states that when the subject of inquiry is the contents of a document, the best evidence is the original document itself and no other evidence (such as a reproduction, photocopy or oral evidence) is admissible as a general rule. The original is preferred because it reduces the chance of undetected tampering with the document.

In the instant case, there is no room for the application of the Best Evidence Rule because there is no dispute regarding the contents of the documents. It is admitted by the parties that the respondents Deed of Sale referred to TCT No. T-62096 as its subject; while the petitioners Deeds of Voluntary Land Transfer referred to TCT No. T-62836 as its subject, which is further described as located in Barangay Murong.

The real issue is whether the admitted contents of these documents adequately and correctly express the true intention of the parties. As to the Deed of Sale, petitioners (and RBBI) maintain that while it refers to TCT No. T-62096, the parties actually intended the sale of the Lantap property (covered by TCT No. T-62836).

As to the VLTs, respondents contend that the reference to TCT No. T-62836 (corresponding to the Lantap property) reflects the true intention of RBBI and the petitioners, and the reference to Barangay Murong was a typographical error. On the other hand, petitioners claim that the reference to Barangay Murong reflects their true intention, while the reference to TCT No. T-62836 was a mere error. This dispute reflects an intrinsic ambiguity in the contracts, arising from an apparent failure of the instruments to adequately express the true intention of the parties. To resolve the ambiguity, resort must be had to evidence outside of the instruments.

The CA rejected any other evidence that could shed light on the actual intention of the contracting parties. Though the CA cited the Best Evidence Rule, it appears that what it actually applied was the Parol Evidence Rule instead.

The Parol Evidence Rule excludes parol or extrinsic evidence by which a party seeks to contradict, vary, add to or subtract from the terms of a valid agreement or instrument. Thus, it appears that what the CA actually applied in its assailed Decision when it refused to look beyond the words of the contracts was the Parol Evidence Rule, not the Best Evidence Rule. The CA gave primacy to the literal terms of the two contracts and refused to admit any other evidence that would contradict such terms.

However, even the application of the Parol Evidence Rule is improper in the case at bar. In the first place, respondents are not parties to the VLTs executed between RBBI and petitioners; they are strangers to the written contracts. Rule 130, Section 9 specifically provides that parol evidence rule is exclusive only as between the parties and their successors-in-interest. The parol evidence rule may not be invoked where at least one of the parties to the suit is not a party or a privy of a party to the written document in question, and does not base his claim on the instrument or assert a right originating in the instrument.

But, the instant case falls under the exceptions to the Parol Evidence Rule, as provided in the second paragraph of Rule 130, Section 9:

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(1) An intrinsic ambiguity, mistake or imperfection in the written agreement;

(2) The failure of the written agreement to express the true intent and agreement of the parties thereto;

x x x x (Emphasis supplied)

Here, the petitioners VLTs suffer from intrinsic ambiguity. The VLTs described the subject property as covered by TCT No. T-62836 (Lantap property), but they also describe the subject property as being located in Barangay Murong. Even the respondents Deed of Sale falls under the exception to the Parol Evidence Rule. It refers to TCT No. T-62096 (Murong property), but RBBI contended that the true intent was to sell the Lantap property. In short, it was squarely put in issue that the written agreement failed to express the true intent of the parties.

Based on the foregoing, the resolution of the instant case necessitates an examination of the parties respective parol evidence, in order to determine the true intent of the parties. Well-settled is the rule that in case of doubt, it is the intention of the contracting parties that prevails, for the intention is the soul of a contract,[45] not its wording which is prone to mistakes, inadequacies, or ambiguities. To hold otherwise would give life, validity, and precedence to mere typographical errors and defeat the very purpose of agreements.

ROMEO I. SUERTE-FELIPE, *petitioner*, *vs. PEOPLE OF THE PHILIPPINES*, *respondent*.
G.R. No. 170974. March 3, 2008. THIRD DIVISION CHICO-NAZARIO, *J*

Thus, entries in the Certificate of Identification of Dead Body are deemed prima facie evidence of the facts stated therein, i.e., that a body has been properly identified as that of Godofredo Ariate. This prima facie evidence of identification cannot be rebutted by an extremely meticulous fault-finding inquiry into the chain of custody of the body of the victim, as such body cannot be easily replaced or substituted by ill-minded persons.

FACTS:

The Information filed against petitioner charged him with homicide.

Prosecution:

Their witness Rodolfo Alumbres testified that he was in Bgy. 180, Maricaban, Pasay City at around 7:30 that night. Around four-arm's length from him were petitioner Suerte-Felipe and the deceased Godofredo Ariate, who were arguing over something. Petitioner was accompanied by PO3 Edison Madriago and PO3 Eduardo Jimeno. Petitioner was armed with a .45 caliber firearm, while Madriago and Jimeno were each armed with a 9mm firearm. All of a sudden, petitioner fired around four shots at Godofredo. Seeing Godofredo fall down, Alumbres rushed to his aid and attempted to bring the latter to the hospital, but petitioner shot him twice and hit him once on the right leg. Fearing that he might be shot again, Alumbres pretended to be dead.

Godofredo's son, William Ariate, and Barangay Chairman Pio Arce witnessed the incident. Arce, upon arriving at the scene of the crime, attempted to appease petitioner by shouting, "Romy, *ayusin na lang natin 'to."* Petitioner did not heed Arce's appeal and instead fired at Arce. Arce used his .38 caliber revolver to defend himself against petitioner who was then more than six meters from him. Arce took cover and exchanged fire with petitioner. Petitioner's companions, Madriago and Jimeno, also fired at Arce.

Godofredo was declared dead on arrival at the Pasay City General Hospital. Edgardo Ariate, another son of Godofredo, identified the body and requested an autopsy examination. Dr. Ludovino J. Lagat, Jr. conducted the autopsy, which showed that Godofredo sustained three gunshot wounds which caused his death. The first wound was located at the outer portion of his right arm. The second wound was at the right flank and the third wound was at the epigastric area, both affecting the intestines and the liver. Armando Mancera, photographer of the Medico-Legal Division of the NBI, took pictures of the body.

Ballistics examination of the slug revealed that the slug was fired from a .45 caliber pistol. Bonifacia Casiñas Ariate presented a marriage contract to prove that she was Godofredo's lawful wife. She also presented receipts amounting to P21,800.00 representing the expenses during Godofredo's funeral.

Petitioner:

He testified that it was the deceased, Godofredo Ariate, and his six to seven companions, which included Pio Arce and William Ariate, who were the unlawful aggressors that night. Godofredo was irked when petitioner chided him for cursing and slapping a retarded boy in the streets. Godofredo and his companions attacked and repeatedly stabbed petitioner. Madriago and Jimeno were also attacked by Godofredo's group. Arce fired at petitioner, Jimeno and Madriago using a .38 caliber revolver. At this point, petitioner drew his .45 caliber firearm in self-defense and accidentally fired it in an upward direction. A street vendor, came out for the first time to narrate what he allegedly witnessed on the night of the incident. Villa practically backed up petitioner's testimony. He said that he did not report what he saw to the police, nor did he tell his wife or any of his relatives about it.

The defense would have also presented as witness Dr. Roger Arcanghel, the doctor who performed surgeries on petitioner, but his testimony was dispensed with.

ISSUE:

Whether the petitioner is guilty beyond reasonable doubt?

RULING:

While the physical evidence ranks very high in our hierarchy of trustworthy evidence and can be relied upon principally to ascertain the truth, presentation thereof is not absolutely indispensable to sustain a conviction. Petitioner's stance that the insufficiency of physical evidence inevitably leads to acquittal is flawed, as we have, on several occasions, sustained convictions based on purely testimonial evidence. In the same manner, guilt beyond reasonable doubt may be produced by the amalgamation of certain physical and testimonial evidence which, when taken separately, would have been insufficient to sustain a conviction.

According to the Court of Appeals, the records clearly show that the body autopsied and referred to in the autopsy report of Dr. Ludovino Lagat of the NBI was no other than that of Godofredo Ariate. The body submitted for autopsy was identified by Godofredo's son, Edgardo. Pictures of Godofredo's body, taken by Armando Mancera during the autopsy, likewise establish the identity of the victim. Moreover, the entries found in the assailed Autopsy Report should be deemed *prima facie* evidence of the facts stated therein, as there had been no proof of any intent on the part of Dr. Lagat to falsely testify on the identity of the victim's body.

We do not find any convincing reason to depart from the findings of the Court of Appeals. The presentation in evidence of the Certificate of Identification of Dead Body, the latter being a public record made in the performance of a duty of officers in the Medico-Legal Office of the National Bureau of Investigation, is governed by Rule 132, Sections 19 and 23 of the Rules of Court, which provides:
SEC. 19. *Classes of documents*. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

xxx xxx xxx

SEC. 23. *Public documents as evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

Thus, entries in the Certificate of Identification of Dead Body are deemed *prima facie* evidence of the facts stated therein, *i.e.*, that a body has been properly identified as that of Godofredo Ariate. This *prima facie* evidence of identification cannot be rebutted by an extremely meticulous fault-finding inquiry into the chain of custody of the body of the victim, as such body cannot be easily replaced or substituted by ill-minded persons. What petitioner is asking of us is not to be sedulous anymore, but to be paranoid and unreasonably mistrustful of the persons whom our very rules require us to trust. Petitioner's criticism of the identification of the body of the victim miserably fails to inject any reasonable doubt in our minds, not when petitioner is even loath to say that the body autopsied was not that of Godofredo Ariate but that of some other person.

We must stress at this point that there was no indication of any impropriety or irregularity committed by the medico-legal officer in this case with respect to the autopsy on the body of the late Godofredo Ariate. Dr. Lagat's duty was to perform the autopsy and not to obsessively investigate the authenticity of the signature appearing on all requests presented to him. Thus, Dr. Lagat, as a medico-legal officer, enjoys the presumption of regularity in the performance of his duties.

Dr. Lagat testified that he recovered a slug in wound number three and not in wound number two as stated in the RTC Decision. However, despite the error committed by the trial court in describing the location where the slug was recovered, there is no factual basis for petitioner's contention that wound number three is not a fatal wound. As shown above, wound number three involves the stomach, liver and intestines. While Dr. Lagat did not testify that wound number three (or wounds number one and two for that matter) was fatal, we believe that it is safe to conclude that wounds number two and three *were probably fatal,* involving as they did vital parts of the body. This is an example of a circumstantial evidence, which is distinguished from direct evidence. Direct evidence is that which proves the fact in dispute without the aid of any inference or presumption; while circumstantial evidence is the proof of fact or facts from which, taken either singly or collectively, the existence of a particular fact in dispute may be inferred as a necessary or probable consequence

While we therefore agree with petitioner that the above physical evidence does not conclusively prove that petitioner fired the bullet which killed Godofredo Ariate, we should find out whether the above circumstantial evidence presented by the prosecution can prove the controverted fact beyond reasonable doubt if considered together with other evidence presented. Thus, Section 4, Rule 133 of the Rules of Court provides:

SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

While we shall deal with the credibility of the witnesses later, it is important to note at this point that Alumbres testified that it was petitioner who fired first. According to Alumbres, he was four-arms length away from Godofredo Ariate who was then face to face with petitioner. Alumbres saw Godofredo Ariate arguing with petitioner, when suddenly, petitioner cocked his gun and shot Godofredo at pointblank range.

Connecting this testimony to the autopsy report, we observe that it was wound number three that was inflicted frontally. The entry point of gunshot wound number three is the area midway along the lower portion of the chest and the upper area of the stomach directed downwards. On the other hand, wound number two entered into the right flank (posterior auxiliary line) and exited at the left upper quadrant of the abdomen. The prosecution posits that this may have been the next shot that hit Godofredo, and the impact must have occurred while body twisted toward the left after receiving wound number three. The prosecution thinks that wound number one may have been the third gunshot wound. It is the one located at the outer portion of the right arm below the elbow and may have been inflicted while Godofredo was falling face down because the entry wound was 16 centimeters below the elbow and it exited higher at only seven centimeters below the elbow. While the trajectory of the bullet was upward from the lower portion of the arm below the elbow, it could have been fired downward while the arm below the elbow was raised in a defensive position.

While there is some doubt as to which between wounds number one and two was the second wound inflicted and which of them was the third, the position (the area midway along the lower portion of the chest and the upper area of the stomach directed downwards) of wound number three (where the .45 bullet was found) is perfectly compatible with Alumbres' testimony on petitioner's first shot against Godofredo Ariate, which first shot was fired at pointblank range. It also makes the version of petitioner (that he accidentally fired the gun upwards) very unlikely.

The uncertainty of Dr. Lagat as to whether the above wounds were caused by three weapons or by just one weapon and as to the caliber of the firearms used does not in any way make us doubt his statements. Dr. Lagat is not competent to answer questions on such area, as his expertise is in the field of medical ballistics which Dr. Lagat stated "pertains to the injury sustained by the victim." Dr. Lagat further explained that it is the job of the ballistician to determine the nature and caliber of the firearm and ammunition used in the shooting.

Likewise, unavailing is petitioner's anticipation that reasonable doubt would come from the statement of SPO3 Danilo Unico (that there was another slug recovered at the crime scene which was brought to the Southern Police District Headquarters for ballistic examination, the results of which was allegedly never revealed to him). SPO3 Unico is to be blamed for the fact that the results were never revealed to him. This is shown by the following lapses that SPO3 Unico committed.

As stated above, it is not the task of the medico-legal officer to determine the caliber of the weapon used in the shooting; it is the job of the ballistician based on the slug that was recovered from the body of the victim. After Dr. Lagat recovered the slug while performing the autopsy of the late Godofredo Ariate, he instructed Armando Mancera to place the recovered slug inside a plastic sachet and to mark the sachet. Armando Mancera followed Dr. Lagat's instructions by placing the slug inside the sachet and marking said plastic sachet with the initials N-99-832.

Testimonial Evidence

The Court of Appeals observed that the remaining assigned errors boiled down to the issue of credibility of the witnesses presented in court. The Court of Appeals applied the settled rule that factual findings of the trial court especially on the credibility of witnesses are accorded great weight and respect and will not be disturbed on appeal inasmuch as the matter of assigning values to the testimonies of witnesses is a function best performed by the trial court, which can weigh said testimony in the light of the witness' demeanor, conduct and attitude during the trial.

As regards to the credibility of the witnesses, we have held that the trial judge is the best and the most competent person who can weigh and evaluate the testimonies of witnesses. Likewise, the trial court is in the best position to assess the credibility of the witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand.

Hence, other than the reasons expressly stated by the trial court in its Decision, the witnesses' demeanor, conduct and attitude on the witness stand were also taken in account by the court. This is particularly relevant in cases such as this, where different interpretations can be had of the same set of testimonies. Indeed, if petitioner's testimony is interpreted the way he explains it now before us, his story can be adjudged consistent.

But whether the trial court believes what petitioner says is another thing. For example, it is indeed *possible* that petitioner just happened to meet and greet Jimeno (who denied 49 knowing petitioner) and Madriago, who were both armed, while going home, and just as they were about to be accosted by the group of Godofredo. It is *possible* that petitioner indeed lost his gun at the time of the incident and merely refrained from reporting its loss even after he was discharged from the hospital. For Villa's part, it is also *possible* that he only informed petitioner of what he knew in the week of his testimony, because he only came to know of the homicide charge in the same week. But it is not enough for petitioner to show that these were all possible; he must likewise convince the Court that these were what indeed happened, particularly in this case where testimonies of the prosecution witnesses were found credible. Petitioner's claims that he and Villa "adequately explained" certain lapses, or that their testimonies were "believable" are but a self-serving evaluation of the testimonies of his own witnesses. TEaADS

In the same way, the physical evidence consisting of the injuries suffered by petitioner does not necessarily convert the "mongrelized claim of self-defense, accident and lack of participation" into one of a "factual admixture" brought about by petitioner's state of mind when he drew and fired his gun. The wounds could have been inflicted after petitioner shot Godofredo, a factual scenario rendered probable by the physical evidence consisting of the position of Godofredo's wound number three. As discussed earlier, the entry point of Godofredo's wound number three, which was probably the first wound inflicted, was the area midway along the lower portion of the chest and the upper area of the stomach directed downwards. It is likely that this was inflicted at pointblank range by someone not "so weak and about to faint."

We are not naïve to feign ignorance that both sets of witnesses — those of the prosecution and the defense — have something to hide. There was something more to the incident than either group is letting us on. That was why the trial court stated that there were loose ends in the prosecution's testimony, and that they "will try mightily hard to free themselves from any blame and portray themselves in the best possible light they can conjure." Thus, a lot of unanswered questions remain, including the number of wounds inflicted on petitioner and Godofredo, and the injury of Alumbres. Just as Alumbres and Arce were silent on the wounds sustained by petitioner, defense witnesses likewise had nothing to say on the wounds of Godofredo and Alumbres. However, despite these unanswered questions, we agree with the trial court that the prosecution had been "forthright and consistently credible in positively identifying the accused as the one who shot Godofredo Ariate to death."

As regards the alleged inconsistencies in the testimonies of Alumbres and Arce, we find these "inconsistencies" either trivial or readily explainable.

We have held that inconsistencies in the testimonies of witnesses on minor details and collateral matters do not affect either the substance of their declarations, their veracity, or the weight of their testimonies; slight contradictions in fact serve to strengthen the sincerity of a witness and prove that his testimony is not rehearsed. It is settled that so long as the witnesses' testimonies concur on substantial matters, the inconsistencies and contradictions do not affect the witnesses' credibility or the verity of their testimonies.

All things considered, there is nothing to indicate that both Alumbres and Arce deviated from the gist of their testimonies, *i.e.*, that both of them saw petitioner gun down Godofredo Ariate. The aforesaid alleged contradictory statements are but minor inconsistencies when a witness is testifying in court, which only shows that both men witnessed the unfolding of the shooting incident from different

vantage points. The slight divergence in their testimonies also goes to show that both men were not rehearsed before they testified at the trial but testified based on their own perceptions.

REPUBLIC OF THE PHILIPPINESVS.CARMEN SANTORIO GALENO
G.R. NO. 215009, JANUARY 23, 2017, PERLAS-BERNABE, J.

Certifications of the Regional Technical Director, DENR cannot be considered prima facie evidence of the facts stated therein. The Court cannot accord probative weight upon them in view of the fact that the public officers who issued the same did not testify in court to prove the facts stated therein.

FACTS:

Galeno filed a petition for correction of the area of Lot No. 2285 covered by OCT No. 46417 before the RTC. She alleged that when she and her co-owners had the subject property resurveyed for the purpose of partition, they discovered a discrepancy in the land area of the subject property as appearing in OCT No. 46417, in that the title reflects an area of 20,948 square meters, while the Certification issued by the DENR Office of the Regional Technical Director, Lands Management Services, shows an area of 21,298 square meters. The RTC granted the petition. The Republic, through the OSG, moved for reconsideration claiming that the adjoining owners had not been notified as such notice is a jurisdictional requirement. The RTC denied the MR. The CA affirmed the RTC and found that Galeno, by a preponderance of evidence, was able to prove, based on the records of the proper government authority, *i.e.,* the Office of the Technical Director, Land Management Services of the DENR, that the true and correct area of the subject property was 21,298 square meters as shown in the approved plan.

ISSUE:

Whether the correction of the area of the subject property in OCT No. 46417 is warranted.

RULING:

No.The Court holds that Galeno did not present any competent evidence to prove that the true and correct area of the subject property is 21,298 square meters instead of 20,948 square meters to warrant a correction thereof in OCT No. 46417.Unfortunately, the documentary evidence presented by Galeno are not sufficient to warrant the correction prayed for. The Court cannot accord probative weight upon them in view of the fact that the public officers who issued the same did not testify in court to prove the facts stated therein. In *Republic v. Medida,* the Court held that certifications of the Regional Technical Director, DENR cannot be considered *prima facie* evidence of the facts stated therein, holding that: "The CENRO and Regional Technical Director, FMS-DENR, certifications [do] not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents."

As such, *sans* the testimonies of Acevedo, Caballero, and the other public officers who issued Galeno's documentary evidence to confirm the veracity of its contents, the same are bereft of probative value and cannot, by their mere issuance, prove the facts stated therein. At best, they may be considered

only as *prima facie* evidence of their due execution and date of issuance but do not constitute *prima facie* evidence of the facts stated therein. In fact, the contents of the certifications are hearsay because Galeno's sole witness and attorney-in-fact, Lea Galeno Barraca, was incompetent to testify on the veracity of their contents, as she did not prepare any of the certifications nor was she a public officer of the concerned government agencies. Notably, while it is true that the public prosecutor who represented the Republic interposed no objection to the admission of the foregoing evidence in the proceedings in the court below, it should be borne in mind that "hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule," which do not, however, obtain in this case. Verily, while Galeno's documentary evidence may have been admitted due to the opposing party's lack of objection, it does not, however, mean that they should be accorded any probative weight.

PEDRO M. BERMEJO, *petitioner-appellant*, vs. ISIDRO BARRIOS, ET AL., *respondents*-appellees.
G.R. No. L-23614 February 27, 1970 EN BANC ZALDIVAR, *J.*

Section 38, Rule 123 of the old Rules of Court,[8] enumerates the following as public writings:

(a) The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of the Philippines, or of a foreign country;

(b) Public records, kept in the Philippines, of private writings.

FACTS:

In G.R. No. L-23614, petitioner Pedro M. Bermejo and Julia "Doe" (her identity at the time was unknown) were charged in the city court of Roxas City, on August 22, 1963, of the crime of falsification of public or official document in an information filed by the city fiscal.

That on or about the 25th day of February 1963, in Roxas City, the two accused prepared a document consisting of an amended petition for habeas corpus stated and made it appear in the amended petition that the same was signed and sworn to by Jovita Carmorin as one of the petitioners when in truth and in fact the said Jovita Carmorin never signed and swore to it, because it was in fact the accused Julia "Doe" who signed and swore to that petition as Julia Carmorin.

Relying on the certification of the city fiscal that a preliminary investigation had been conducted the City Judge, Hon. Isidro O. Barrios, issued, on August 24, 1963, an order for the arrest of accused Bermejo.

Upon arraignment, Bermejo filed a motion to quash the information alleging in substance: (1) that the information did not charge an offense because the amended petition for *habeas corpus*, allegedly falsified, is not a document contemplated under the provisions of Article 172 of the Revised Penal Code; (2) that the court did not acquire jurisdiction over his person because the warrant issued for his arrest was illegal, Judge Barrios having issued the same without first examining the witnesses under oath as required under RA 3828.

Respondent City Judge denied the motion to quash

MR filed by Bermejo -> denied; lack of merit -> certiorari and prohibition naming City Judge Isidro and City Fiscal Abela for GAD

Petitioner Bermejo contends that notwithstanding his request to be present at the preliminary investigation, the same was conducted in his absence or behind his back thus denying him his day in court.

He also argued that Sec. 14, Rule 112 of ROC was applicable to him.

ISSUE:

Whether or Not the petitioner is correct that the CFI of Roxas City has no power to initiate the investigation of cases without a previous complaint by an offended party

RULING:

NO. In the case of *U.S. v. Orera*,[6] a "document" is defined as a deed, instrument or other duly authorized paper by which something is proved, evidenced or set forth. In *U.S. v. Asensi*,[7] this Court held that any instrument authorized by a notary public or a competent public official, with the solemnities required by law, is a public document. Section 38, Rule 123 of the old Rules of Court,[8] enumerates the following as public writings:

(a) The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of the Philippines, or of a foreign country;

(b) Public records, kept in the Philippines, of private writings.

The same principle also obtains in the United States, that "defendant's pleadings and papers, which were involved in civil actions and which were in custody of county clerk as *ex-oficio* clerk of superior court in which action was pending, were 'public documents' and were within scope of subject matter of statute making alteration of court records an offense."[9] Considering that the petition for *habeas corpus* alleged the illegal confinement, or deprivation of liberty, of one Soterania Carmorin, and that said petition was duly subscribed and sworn to before Clerk of Court Leopoldo B. Dorado and filed with the Court of First Instance of Capiz, forming, therefore, a part of the court records in said proceedings, it cannot be disputed that said petition is a public or official document as contemplated in Articles 171 and 172 of the Revised Penal Code. Petitioner Bermejo, therefore, cannot say that he committed no crime if it can be shown that, as charged in the information, he connived or conspired with a certain Julia "Doe" in falsifying said petition by making it appear that Jovita Carmorin placed her thumbmark therein when in fact she did not do so.

Further, we find in the record — and the court *a quo* so found too — that on March 11, 1963, a *subpoena* was issued to Atty. Pedro M. Bermejo requiring him to appear at the office of the city fiscal of Roxas City on March 14, 1963 in an investigation. This *subpoena* was received by Bermejo on March 12, 1963, and on the same day he sent a letter to the city fiscal, which was received by the latter in the afternoon of the same day, requesting that the investigation be postponed to March 19, 1963 because he Bermejo had to attend to another case which was scheduled to be heard on the same date. The city fiscal acceded to his request, but because the fiscal's office failed to notify him of the hearing on March 19, 1963, Bermejo was not present when the investigation was conducted on that day. The preliminary investigation was conducted on the very day requested by Bermejo, and after

finding that there was a *prima facie*case the city fiscal filed the information against him on August 22, 1963.
It appears, therefore, that while the city fiscal failed to notify petitioner Bermejo that his request for postponement was granted, which should have been done, it can also be said that Bermejo was not entirely blameless if the preliminary investigation was conducted in his absence. It was he himself who set the date of the investigation in his request for postponement, but he did not bother to come on the date he fixed. Neither did he try to find out what action the city fiscal had taken on his request for postponement, on any day before the date of the hearing set by him, although he is living in Roxas City where the city fiscal holds his office. Moreover, the information was filed five months later, and this petitioner never inquired, at least as to the status of his case. This behavior of petitioner cannot merit Our approval. It is obvious that he failed to employ the standard of care or reasonable diligence that is expected of him. His unwarranted absence on the day of the hearing which he himself requested, coupled with his seeming indifference or unconcern about his case, is a clear indication that he was guilty of gross negligence in the protection of his rights. If he did not have his day in court, it was because of his own negligence. If he was really interested to attend the investigation, as he now pretends, he should have taken pains to communicate with the city fiscal. This Court had ruled that in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of opportunity to be heard. [10] Since petitioner Bermejo was afforded the opportunity to appear at the preliminary investigation but did not take advantage of it, he has no one to blame but himself. Anyway, said petitioner's rights can still be amply protected in the regular trial of the case against him in the city court where he can cross examine the witnesses and present his evidence.

Furthermore, even assuming that the city fiscal did not notify petitioners, but had conducted the preliminary investigations *ex parte*, their rights to due process could not have been violated for they are not entitled as of right to preliminary investigation. The numerous authorities [12] supporting this view are not rendered obsolete, as claimed by petitioners, because Section 14, Rule 112 of the new Rules of Court invoked by them has no application in their cases, it appearing that the new Rules of Court took effect on January 1, 1964 while the preliminary investigations conducted by the city fiscal were conducted in 1963. The Rules of Court are not penal statutes, and they cannot be given retroactive effect.

Having arrived at the conclusion that respondent city fiscal did not abuse his discretion in conducting the preliminary investigations and that he filed the informations against herein petitioners in accordance with law, there is, therefore, no merit in the assertion of petitioners that the warrants of arrest issued for their arrest were illegal. Besides, granting *arguendo* that the orders of arrest were tainted with irregularity, still the posting by petitioners of their bail bonds amounted to a waiver of the effect of said defects.

There is merit in the assertion that the warrant of arrest was irregularly issued. Section 87 of the Judiciary Act as amended by Republic Act 3828 requires that the Municipal Judge issuing the same,*personally*, examine under oath the witnesses, and by *searching* questions and answers which are to be reduced to writing. Here, instead of searching questions and answers, we have only the affidavits of respondent and her one witness. Moreover, said affidavits were sworn to before Judge Cabungcal, not before Judge Juntereal who issued the warrant of arrest.

However, the giving of bail bond by petitioner constitutes a waiver of the irregularity attending her arrest. Besides, by her other personal appearances before the municipal court and the court *a quo*, petitioner voluntarily submitted herself to the court's jurisdiction. Hence, the absence of preliminary

examination becomes moot already, the court having acquired jurisdiction over the person of petitioner and could therefore proceed with the preliminary investigation proper."

The other point raised by petitioners in their contention that the respondent City Judge abused his discretion in denying their motion to quash is that there was a judicial declaration in the *habeas corpus* case that the thumbmark appearing in the petition was the genuine thumbmark of Jovita Carmorin, and that pronouncement is now conclusive so that they cannot be prosecuted for falsification or perjury, as the case may be. This particular question should rather be submitted and threshed out in the city court during the trial. The record of the *habeas corpus* proceeding is not before Us, and We have no means of knowing what actually transpired in that proceeding. The proper determination of this question will involve not only the introduction and consideration of evidence, but also calls for a detailed inquiry on the principle of estoppel by, or conclusiveness of, judgment.

Also devoid of merit is the other error pointed to by petitioners with respect to the alleged admission by respondents that they acted illegally, capriciously, or in excess of jurisdiction. A cursory examination of their answers would reveal that what was admitted by respondent was the fact of the filing by petitioners of their pleadings, but not the allegations contained therein, for, as shown in the record, respondents have staunchly defended their acts and insisted that their actuations are legal or in accordance with law.

MARINA LLEMOS, PEDRO LLEMOS, FELISA LLEMOS and VIRGINIA M. JIMENEZ, *Petitioners,* vs. ROMEO LLEMOS, ROMY LLEMOS, MERCEDES LLEMOS, EUSEBIA LL. FERNANDEZ, JULIANA LL. CARAMAT, FORTUNATA LLEMOS, ALIPIO LLEMOS, AMELIA LL. ABRIGO, PERFECTO LLEMOS, ALIPIA LL. CARAMAT, JOVITA LL. LACA, GENEROSA LLEMOS ABRIGO, ROSALINA LL. CRUZ, ARTURO LLEMOS, TEODORA LLEMOS, RODOLFO LLEMOS, PET LLEMOS and ROSARIO LLEMOS, *Respondents.*
G.R. No. 150162, January 26, 2007, THIRD DIVISION, AUSTRIA-MARTINEZ, *J.*

It is well-settled that Church registries of births, marriages, and deaths made subsequent to the promulgation of General Orders No. 68 and the passage of Act No. 190 are no longer public writings, nor are they kept by duly authorized public officials. They are private writings and their authenticity must therefore be proved as are all other private writings in accordance with the rules of evidence.

Respondents failed to establish the due execution and authenticity of the Certificate of Death in accordance with Section 20, Rule 132 of the Rules of Court which provides:

SEC. 20. Proof of private document. – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

a) By anyone who saw the document executed or written; or

b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

FACTS:

Respondents and petitioners are the heirs of the late Saturnina Salvatin Llemos, being their grandmother. The late Saturnina Salvatin Llemos had four (4) children, namely: Adriano, Santiago,

and Domingo Llemos, who were the predecessors-in-interest of respondents, and Felipe Llemos, who was the predecessor-in-interest of herein petitioners.

During her lifetime, the late Saturnina Salvatin Llemos acquired a parcel of land, which all the parties presently occupy.

On November 5, 1964, the Register of Deeds of Dagupan, Pangasinan, cancelled Original Certificate of Title and issued a new TCT, in the name of Felipe Llemos, by virtue of a Deed of Absolute Sale thumb marked by Saturnina Salvatin Llemos conveying said property to Felipe Llemos, for a consideration of ₱200.00 Sometime in 1991, Jovita Llemos Laca, one of the respondents, decided to improve her residential house on said parcel of land. Hence, she borrowed the title of the property from one of the petitioners, Felisa Llemos, for purposes of securing a building permit. It was on such instance that respondents discovered that the title of the property was already in the name of herein [petitioners].

On August 10, 1992, respondents filed the instant action for Declaration of Nullity of said Transfer Certificate [of] Title and for damages. The complaint, was amended to include additional plaintiffs who are likewise heirs of Saturnina Salvatin Llemos.

The RTC held that although respondent Eusebia Ll. Fernandez (Eusebia) testified that Saturnina was her grandmother and that she died in 1938, Eusebia did not testify on the fact of death of Saturnina from personal knowledge; that the respondents' cause of action heavily rests on the Certificate of Death only and no other evidence; that since at the time Saturnina died, there was already an existing public registry by virtue of Act 3753, hence, no other entity, not even the Catholic Church, had the authority to issue a certificate regarding the fact of death which can qualify as a public document; that, for these reasons, the Certificate of Death is a private document and must be authenticated to be admissible as evidence; that respondents failed to notarize or otherwise authenticate the same and, hence, the facts stated therein are hearsay; and finally, since the deed in question was registered as early as 1964, more than 20 years had already lapsed, hence, the respondents' cause of action had already prescribed at the time of the filing of their Complaint on August 10, 1992.

ISSUES:

1. Whether the cause of action had prescribed or that the respondents are guilty of laches.

2. Whether the CA erred in giving undue weight to the certificate of death issued by the church when the register was never presented nor the clerk who prepared the same was presented for its authentication.

RULING:

1. NO. The Court has recently affirmed the rule that an action for annulment of title or reconveyance based on fraud is imprescriptible where the plaintiff is in possession of the property subject of the acts. It is not disputed that respondents (plaintiffs), including petitioners (defendants), presently occupy the property in question.

Nor can laches be invoked against respondents. In *Agra v. Philippine National Bank*,[10] the Court held that prescription is different from laches, as the latter is principally a question of equity and each case is to be determined according to its particular circumstances.

In the present case, evidence shows that the Deed of Absolute Sale, conveying the subject property to Felipe, petitioners' predecessor-in-interest, was thumbmarked by Saturnina, by virtue of which, the Register of Deeds of Dagupan, Pangasinan cancelled Original Certificate of Title and issued Transfer Certificate of Title (TCT) on November 5, 1964 in the name of Felipe.

Petitioners insist that respondents are guilty of laches considering that the latter filed the complaint for declaration of nullity of the TCT only on August 10, 1992 or almost 28 years after the TCT was issued to the former on November 5, 1964. On the other hand, respondents claim that when the Deed of Absolute Sale, on which basis the TCT was issued, was purportedly thumbmarked by Saturnina on November 5, 1964, the latter had been dead since 1938; that therefore fraud attended the execution of the Deed of Absolute Sale; that the TCTs in the names of petitioners are null and void; and that they discovered the fact of fraud only in 1991.

It is a well-settled doctrine that laches cannot be used to defeat justice or perpetuate fraud and injustice. Neither should its application be used to prevent the rightful owners of a property from recovering what has been fraudulently registered in the name of another.

However, in order that respondents' complaint may prosper, the burden of proof is on them to show by preponderance of evidence that the execution of the Deed of Absolute Sale was fraudulent and, consequently, the issuance of the TCT, a nullity.

Respondents rely principally on the Certificate of Death issued by Rev. Fr. Camilo V. Natividad on January 29, 1991, attesting that "Salvatin Salvatin", widow of Andres Llemos died on the 12th day of March 1938 and was buried in the Roman Catholic Cemetery of the parish of St. John Metropolitan Cathedral, Dagupan City. The Certificate further attests that it is a true copy of the original records as it appears in the Register of Dead of said Parish.

It is well-settled that Church registries of births, marriages, and deaths made subsequent to the promulgation of General Orders No. 68 and the passage of Act No. 190 are no longer public writings, nor are they kept by duly authorized public officials. They are private writings and their authenticity must therefore be proved as are all other private writings in accordance with the rules of evidence.
Respondents failed to establish the due execution and authenticity of the Certificate of Death in accordance with Section 20, Rule 132 of the Rules of Court which provides:

SEC. 20. *Proof of private document.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

a) By anyone who saw the document executed or written; or

b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.
As aptly pointed out by the RTC, respondents failed to present a witness to prove the due execution and authenticity of the Certificate of Death.

2. YES. The CA considered the entry in the Registry Book of St. John Metropolitan Cathedral as to the date of death as admissible in evidence on the ground that it is an entry in the course of official

business which is an exception to the hearsay rule, citing Section 37, Rule 130 of the Rules of Court, *viz:*

SEC. 37. *Entries in the course of business*. - Entries made at, or near the time of the transactions to which they refer, by a person deceased, outside of the Philippines or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

Unfortunately, respondents did not submit as evidence the Register of Dead, Book No. 20 of St. John Metropolitan Cathedral and they failed to comply with the provisions of Section 5, Rule 130, to wit:
SEC. 5. *When original document is unavailable.* – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.[18]

Under Section 3, Rule 130, Rules of Court, the original document must be produced and no evidence shall be admissible other than the original document itself, except in the following cases:

x x x x

a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

d) When the original is a public record in the custody of a public officer or is recorded in a public office.

None of the exceptions are attendant in the present case. The Register of Dead is in the custody of St. John Metropolitan Cathedral but respondents failed to show that it presented the Certificate of Death because the Register of Dead cannot be produced in court. There is no showing that the Register of Dead consists of numerous documents which cannot be examined in court without great loss of time and the fact sought to be established from it is only the general result of the whole. Further, respondents failed to present an authentic document that recites the contents of the Register of Dead.

As earlier held, the Certificate of Death is a private document and not a public document; and respondents failed to prove its authenticity by their failure to present any witness to testify on the due execution and genuineness of the signature of Fr. Natividad, pursuant to Section 20, Rule 132.

Moreover, the Court notes the absence of evidence showing that "Salvatin Salvatin" mentioned in the Certificate of Death is the same "Saturnina Salvatin" referred to by them as their predecessor-in-interest; and that Father Natividad has personal knowledge of the date of death of "Salvatin Salvatin".

The CA merely relied on the Register of Dead of the parish which, as earlier pointed out, was not presented in court.

On the other hand, petitioners presented the questioned Deed of Absolute Sale dated November 5, 1964. It is a notarized document which, as correctly found by the RTC, had been [E]xecuted with all the formalities of law and ratified by a notary public who attested that the vendor Saturnina Salvatin appeared before him and acknowledged her deed to be her free act and deed. It was executed in the presence of two witnesses. Maria Llemos Jimenez likewise testified that the deed was properly executed for valuable consideration at the time.

A notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures. Notarized documents enjoy the presumption of regularity which can be overturned only by clear and convincing evidence.

As found earlier, respondents failed to establish the date of death of their predecessor-in-interest which could have proven that the thumbmark of Saturnina in the Deed of Absolute Sale was fraudulently affixed because she had died before the deed of sale was purportedly executed by her. In fine, respondents failed to establish by preponderance of evidence their claim that petitioners' predecessor-in-interest obtained his title through fraud.

NORMA B. DOMINGO, ***Petitioners,*** **vs. YOLANDA ROBLES; and MICHAEL MALABANAN ROBLES, MARICON MALABANAN ROBLES, MICHELLE MALABANAN ROBLES, All Minors Represented by Their Mother, YOLANDA ROBLES,** ***Respondents***
G.R. No. 153743. March 18, 2005 PANGANIBAN, J.

A notarized instrument enjoys a prima facie presumption of authenticity and due execution. Clear and convincing evidence must be presented to overcome such legal presumption. Forgery cannot be presumed; hence, it was incumbent upon petitioner to prove it.

FACTS:

Petitioner and her husband are the registered owners of a parcel of land. Petitioner discontinued the construction of the house because her husband failed to send the necessary financial support. They then decided to sell the land and Bacani volunteered to sell the same.

The title was sent to Bacani but it was lost. For the reconstitution of title, petitioner sent bacani all the receipt for payment of real estate taxes. They then waited patiently but bacani did not show up anymore. When Norma visited the lot, she was surprised that a house was already being constructed and when she went to the register of deeds, the reconstitution of title was already cancelled and a deed of sale was already signed in favor of Robles.

Petitioner claimed that she did not meet with the Robles and she did not sign any deed of sale and she said that it was a forgery. Robles however argued that they are buyer in good faith and for value. They further alleged that bacani introduced them to supposed owners and respondents paid the full price. Then sometime later, [Respondents] Robles contracted to sell the lot in issue in favor of spouses Danilo and Herminigilda Deza for ₱250,000.00. [Respondent] Yolanda Robles even had to secure a guardianship authority over the persons and properties of her minor children from the Regional Trial Court of Pasig in JDRC No. 2614. When only ₱20,000.00 remained unpaid of the total purchase price under the contract to sell, payment was stopped because of the letter received by

Yolanda Robles that [petitioner] intends to sue her. The RTC dismissed the complaint and the CA saying that respondent is a PURCHASER IN GOOD FAITH AND FOR VALUE affirmed it. Petitioner contends that their signature is forged, and that forged deed is void and conveys no title.

ISSUE:

Whether or Not the respondent is a purchaser in good faith.

RULING:

YES. The findings of the court are amply supported by evidence.

A notarized instrument enjoys a prima facie presumption of authenticity and due execution. Clear and convincing evidence must be presented to overcome such legal presumption. Forgery cannot be presumed; hence, it was incumbent upon petitioner to prove it.

What surprises the Court is that a comparison of the signature of appellant Norma Domingo in the Deed of Absolute Sale in favor of the appellees and the signature in the verification of the complaint manifest a striking similarity to the point that without any contrary proof, it would be safe to conclude that said signatures were written by one and the same person. Sadly, appellant left that matter that way without introducing counteracting evidence.

Petitioner also failed to convince the trial court that the person with whom Respondent Yolanda Robles transacted was in fact not Valentino Domingo. Except for her insistence that her husband was out of the country, petitioner failed to present any other clear and convincing evidence that Valentino was not present at the time of the sale. Bare allegations, unsubstantiated by evidence, are not equivalent to proof

ST. MARY'S FARM, INC., *Petitioner, v.* PRIMA REAL PROPERTIES, INC., RODOLFO A. AGANA, JR., and THE REGISTER OF DEEDS OF LAS PIÑAS, METRO MANILA, *Respondents*.
G.R. NO. 158144 : July 31, 2008D THIRD DIVISION NACHURA, *J.*

It is a public document where the notarial acknowledgement is prima facie evidence of the fact of its due execution. A buyer presented with such a document would have no choice between knowing and finding out whether a forger lurks beneath the signature on it. The notarial acknowledgment has removed that choice from him replacing it with a presumption sanctioned by law that the affiant appeared before the notary public and acknowledged that he executed the document, understood its import and signed it. The buyer is given the luxury to rely on the presumption of regularity of a duly notarized SPA.

FACTS:

St. Mary's was the registered owner of an originally 25,598 sqm of land in Las Pinas under TCT S-1648.

In compliance with a final court decision in another civil case, St. Mary's passed and approved in 1988 a board resolution authorizing defendant Rodolfo Agana to cede to T.S. Cruz Subdivision 4,000 sqm of the abovementioned land.

Agana did not return to plaintiff the said title. Instead, allegedly forged a board resolution of St. Mary's authorizing Agana to sell the remaining 21,598 sqm of land. This board resolution was duly notarized. Agana was also with a Special Power of Attorney when it dealt with T.S. Cruz and Prima Real Properties.

Eventually, a deed of absolute sale was signed by Agana and Prima Real Properties transferring ownership of the land from St. Mary's to Prima.

Prima effected the cancellation of TCT S-1648 in the name of St. Mary's and another TCT T-6175 in its name was issued by the Registry of deeds, Villanueva.

Prima purchased from T.S. Cruz Subdivision the 4,000 sqm portion of the land.

St. Mary's filed an action for rescission of the sale and the reconveyance of the property.

According to St. Mary's:

Sale of the realty entered into between Agana and Prima is null and void for lack of authority on the part of Agana to sell the property.

The board resolution allegedly granting Agana the authority to sell in behalf of the company, as certified by Corp. Secretary Agcaoili is a forgery as no board meeting was held on June 27, 1988; the said document was merely presented to the notary public for notarization without Atty. Agcaoili appearing before him.

Consequently, the deed of absolute sale was void for being a result of a fraudulent transaction.
Prima contends:

It acted in good faith when it relied solely on the face of the authorization of Agana and paid in full the purchase price of P2,567,760.00 making it a buyer in good faitgh and for value.

Even assuming that the authorization of Agana was forged, St. Mary's, through its president, accepted and received part of the purchase price knowing fully well the same to be the proceeds of the sale of the property, St. Mary's is now estopped from asking for rescission.

ISSUE:

Whether or not Prima was a buyer in bad faith

Whether or not Agana was authorized to sell the subject property

RULING:

No, Prima was a buyer in good faith and for value.

On the basis of the board resolution, Prima had every reason to rely on Agana's authority to sell the land.

A buyer for value and in good faith is one who buys property of another, without notice that some other person has a right or interest in such property and pays full and fair price for the same, at the same time of such purchase, or before he has notice of the said claim or interest. To prove good faith, a buyer of registered and titled land need only show that he relied on the face of the title of the property. Sufficient that the following conditions concur:

The seller is the registered owner of the land

Owner has possession of the land

At the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property

All the three conditions are present in the case.

Prima exerted efforts to verify the true background of the subject land

Agana presented to Prima the notarized board resolution, separate Certification by St. Mary's president authorizing Agana to sell the land, and a TCT of the property

Yes, Agana had the authority to sell the subject property by virtue of the notarized board resolution and the Special Power of Attorney.

The document under scrutiny is a special power of attorney that is duly notarized. It is a public document where the notarial acknowledgement is prima facie evidence of the fact of its due execution. A buyer presented with such a document would have no choice between knowing and finding out whether a forger lurks beneath the signature on it. The notarial acknowledgment has removed that choice from him replacing it with a presumption sanctioned by law that the affiant appeared before the notary public and acknowledged that he executed the document, understood its import and signed it. The buyer is given the luxury to rely on the presumption of regularity of a duly notarized SPA.

Prima also relied on the confirmation and certification of the Register of Deeds of Las Pinas and Mr. T.S. Cruz. When Agana first sold the 4,000 sqm portion to T.S. Cruz, he showed a similar authorization by the petitioner which was also signed by the corporate secretary, Atty. Agcaoili. Agana acted as St. Mary's authorized agent and had full authority to bind the company in that first transaction with Cruz.

The board resolution also negates the assertion by St. Mary's that Agana's authority was only limited to negotiate and not to sell. The resolution further averred that Agana was "authorized and empowered to sign any and all documents, instruments, papers or writings which may be required and necessary for this purpose to bind the corporation in this undertaking." The certification of St. Mary's president also attests to this fact. With this, Agana, undeniably had the authority to cede the subject property, carrying with it all the concomitant powers necessary to implement said transaction.

NORTHWEST AIRLINES, INC., *Petitioner,* -versus- STEVEN P. CHIONG, *Respondent.* G.R. No. 155550, January 31, 2008, THIRD DIVISION, Nachura, J.

The documentary and testimonial evidence, taken together, amply establish the fact that Chiong was present at MIA on April 1, 1989, passed through the PCG counter without delay, proceeded to the Northwest check-in counter, but when he presented his confirmed ticket thereat, he was not issued a boarding pass, and ultimately barred from boarding Northwest Flight No. 24 on that day.

The categorical declaration of Chiong and his other witnesses, coupled with the PCG stamp on his passport and seaman service record book, prevails over Northwest's evidence, particularly the Flight Manifest.

Further, we find the manifest and passenger name record to be mere hearsay evidence.

FACTS:

Respondent Steven Chiong was supposed to depart for San Diego, California for an employment as an engineer of TransOcean's vessel *M/V Elbia*. Thus, on April 1, 1989, Chiong arrived at the Manila International Airport. Marilyn Calvo, the Liaison Officer of Philimare (Philippine agent of TransOcean), met Chiong at the departure gate, and the two proceeded to the Philippine Coast Guard (PCG) Counter to present Chiong's seaman service record book for clearance. Thereafter, Chiong's passport was duly stamped, after complying with government requirements for departing seafarers. Chiong proceeded to queue at the Northwest (the airline) check-in counter. When it was Chiong's turn, the Northwest personnel informed him that his name did not appear in the computer's list of confirmed departing passengers. Chiong was then directed to speak to a "man in *barong*" standing outside Northwest's counters from whom Chiong could allegedly obtain a boarding pass. Posthaste, Chiong approached the "man in *barong*" who demanded US$100.00 in exchange therefor. Without the said amount, and anxious to board the plane, Chiong queued a number of times at Northwest's Check-in Counter and presented his ticket. Ultimately, he was not able to depart for San Diego.

Thus, Chiong filed a Complaint for breach of contract of carriage before the RTC. Northwest contradicted, reiterating that Chiong had no cause of action against it because per its records, Chiong was a "no-show" passenger

ISSUE:

Whether or not Chiong was able to prove by preponderance of evidence his claim for breach of contract.

RULING:

YES. In this regard, the Court notes that, in addition to his testimony, Chiong's evidence consisted of a Northwest ticket for the April 1, 1989 Flight No. 24, Chiong's passport and seaman service record book duly stamped at the PCG counter, and the testimonies of Calvo, Florencio Gomez, and Philippine Overseas Employment and Administration (POEA) personnel who all identified the signature and stamp of the PCG on Chiong's passport.

Indeed, Chiong's Northwest ticket for Flight No. 24 on April 1, 1989, coupled with the PCG stamps on his passport showing the same date, is direct evidence that he was present at MIA on said date as he intended to fly to the United States on board that flight. As testified to by POEA personnel and officers, the PCG stamp indicates that a departing seaman has passed through the PCG counter at the airport,

surrendered the exit pass, and complied with government requirements for departing seafarers. Calvo, Philimare's liaison officer tasked to assist Chiong at the airport, corroborated Chiong's testimony on the latter's presence at the MIA and his check-in at the PCG counter without a hitch. Calvo further testified that she purposely stayed at the PCG counter to confirm that Chiong was able to board the plane, as it was part of her duties as Philimare's liaison officer, to confirm with their principal, TransOcean in this case, that the seafarer had left the country and commenced travel to the designated port where the vessel is docked. Thus, she had observed that Chiong was unable to check-in and board Northwest Flight No. 24, and was actually being given the run-around by Northwest personnel.

It is of no moment that Chiong's witnesses – who all corroborated his testimony on his presence at the airport on, and flight details for, April 1, 1989, and that he was subsequently bumped-off – are, likewise, employees of Philimare which may have an interest in the outcome of this case. T**his Court has repeatedly held that a witness' relationship to the victim does not automatically affect the veracity of his or her testimony**.

The foregoing documentary and testimonial evidence, taken together, amply establish the fact that Chiong was present at MIA on April 1, 1989, passed through the PCG counter without delay, proceeded to the Northwest check-in counter, but when he presented his confirmed ticket thereat, he was not issued a boarding pass, and ultimately barred from boarding Northwest Flight No. 24 on that day.

Furthermore, it has not escaped our attention that Northwest did not present as a witness their check-in agent on that contentious date. This omission was detrimental to Northwest's case considering its claim that Chiong did not check-in at their counters on said date. It simply insisted that Chiong was a "no-show" passenger and totally relied on the Flight Manifest, which, curiously, showed a horizontal line drawn across Chiong's name, and the name W. Costine written above it. The reason for the insertion, or for Chiong's allegedly being a "no-show" passenger, is not even recorded on the remarks column of the Flight Manifest beside the Passenger Name column. Clearly, the categorical declaration of Chiong and his other witnesses, coupled with the PCG stamp on his passport and seaman service record book, prevails over Northwest's evidence, particularly the Flight Manifest.

Further, we find the manifest and passenger name record to be mere hearsay evidence. As a rule, "entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of a duty and in the ordinary or regular course of business or duty". [Rule 130, Section 43, Revised Rules of Court]

Otherwise stated, in order to be admissible as entries in the course of business, it is necessary that:

(a) the person who made the entry must be dead or unable to testify; (b) the entries were made at or near the time of the transactions to which they refer; (c) the entrant was in a position to know the facts stated in the entries; (d) the entries were made in his professional capacity or in the performance of a duty; and (e) the entries were made in the ordinary or regular course of business or duty.

Tested by these requirements, we find the manifest and passenger name record to be mere hearsay evidence. While there is no necessity to bring into court all the employees who individually made the entries, it is sufficient that the person who supervised them while they were making the entries testify that the account was prepared under his supervision and that the entries were regularly entered in the ordinary course of business. **In the case at bench, while MENDOZA was the supervisor on-duty on April 1, 1989, he has no personal knowledge of the entries in the manifest since he did not supervise the preparation thereof. More importantly, no evidence was presented to prove that the employee who made the entries was dead nor did the defendant-appellant set forth the circumstances that would show the employee's inability to testify**.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- SALVADOR GOLIMLIM @ "BADONG", *Appellants.*
G.R. No. 145225, April 2, 2004, THIRD DIVISION, Carpio- Morales, J.

It can not then be gainsaid that a mental retardate can be a witness, depending on his or her ability to relate what he or she knows. If his or her testimony is coherent, the same is admissible in court.

Thus, in a long line of cases, this Court has upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

From a meticulous scrutiny of the records of this case, there is no reason to doubt Evelyn's credibility. To be sure, her testimony is not without discrepancies, given of course her feeblemindedness.

FACTS:

Appellant Salvador Golimlim was convicted by the RTC for rape for having carnal knowledge of one Evelyn Canchela, against her will and without her consent. In doing so, the trial court gave weight and credence to the testimony of the victim who is a mental retardate.

Golimlim thereafter filed the present appeal. He argues that Evelyn's testimony is not categorical and is replete with contradictions, thus engendering grave doubts as to his criminal culpability.

ISSUE:

Whether or not the testimony of the victim, who is a mental retardate, is sufficient to sustain the conviction of the appellant.

RULING:

YES. That Evelyn is a mental retardate does not disqualify her as a witness nor render her testimony bereft of truth.

Sections 20 and 21 of Rule 130 of the Revised Rules of Court provide:

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

x x x

SEC. 21. *Disqualification by reason of mental incapacity or immaturity.* – The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

In *People v. Trelles*, where the trial court relied heavily on the therein mentally retarded private complainant's testimony irregardless of her "monosyllabic responses and vacillations between lucidity and ambiguity," this Court held:

A mental retardate or a feebleminded person is not, *per se*, disqualified from being a witness, her mental condition not being a vitiation of her credibility. It is now universally accepted that intellectual weakness, no matter what form it assumes, is not a valid objection to the competency of a witness so long as the latter can still give a fairly intelligent and reasonable narrative of the matter testified to.[25]

It can not then be gainsaid that a mental retardate can be a witness, depending on his or her ability to relate what he or she knows. If his or her testimony is coherent, the same is admissible in court. Thus, in a long line of cases, this Court has upheld the conviction of the accused based mainly on statements given in court by the victim who was a mental retardate.

From a meticulous scrutiny of the records of this case, there is no reason to doubt Evelyn's credibility. To be sure, her testimony is not without discrepancies, given of course her feeblemindedness.

By the account of Dr. Chona Cuyos-Belmonte, Medical Specialist II at the Psychiatric Department of the Bicol Medical Center, who examined Evelyn, although Evelyn was suffering from moderate mental retardation with an IQ of 46, she is capable of perceiving and relating events which happened to her. As noted in the testimony of Dr. Belmonte, Evelyn could give spontaneous and consistent answers to the same but differently framed questions under conditions which do not inhibit her from answering, which she did in pointing to the accused as the one who raped her.

Appellant's bare denial is not only an inherently weak defense. It is not supported by clear and convincing evidence. It cannot thus prevail over the positive declaration of Evelyn who convincingly identified him as her rapist.

FELICITO G. SANSON, CELEDONIA SANSON-SAQUIN, ANGELES A. MONTINOLA, EDUARDO A. MONTINOLA, JR., *Petitioners-appellants,*
-versus- HONORABLE COURT OF APPEALS, FOURTH DIVISION and MELECIA T. SY, as Administratrix of the Intestate Estate of the Late Juan Bon Fing Sy, *Respondents-appellees.*
G.R. No. 127745, April 22, 2003, THIRD DIVISION, CARPIO MORALES, *J.*:

The Dead Man's Statute renders incompetent: 1) parties to a case; 2) their assignors; or 3) persons in whose behalf a case is prosecuted. The rule is exclusive and cannot be construed to extend its scope by implication so as to disqualify persons not mentioned therein.

Mere witnesses who are not included in the above enumeration are not prohibited from testifying as to a conversation or transaction between the deceased and a third person, if he took no active part therein.

In any event, what the Dead Man's Statute proscribes is the admission of testimonial evidence upon a claim which arose before the death of the deceased. The incompetency is confined to the giving of testimony. Since the separate claims of Sanson and Celedonia are supported by checks-documentary evidence, their claims can be prosecuted on the bases of said checks.

FACTS:

On February 7, 1990, herein petitioner-appellant Felicito G. Sanson, in his capacity as creditor, filed before the RTC of Iloilo City a petition for the settlement of the estate of Juan Bon Fing Sy. Sanson claimed that the deceased was indebted to him and to his sister Celedonia Sanson-Saquin (Celedonia). Petitioners-appellants Eduardo Montinola, Jr. and his mother Angeles later filed separate claims against the estate, alleging that the deceased also owed them.

The RTC appointed Melecia T. Sy, surviving spouse of the deceased, as administratrix of his estate. During the hearing of the claims against the estate, Sanson, Celedonia, and Jade Montinola, wife of claimant Eduardo Montinola, Jr., testified on the transactions that gave rise thereto, thus:

- Sanson, in support of the claim of his sister Celedonia, testified that she had a transaction with the deceased which is evidenced by six checks issued by him before his death

- Celedonia, in support of the claim of her brother Sanson, testified that she knew that the deceased issued five checks to Sanson in settlement of a debt;

- Jade, in support of the claims of her husband Eduardo Montinola, Jr. and mother-in-law Angeles, testified that on separate occasions, the deceased borrowed from her husband and mother-in-law,

Such testimony was over the objection of the administratrix who invoked Section 23, Rule 130 of the Revised Rules of Court otherwise known as the Dead Man's Statute which reads:

> SEC. 23. *Disqualification by reason of death or insanity of adverse party*.—Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

Finding that the Dead Man's Statute does not apply to the witnesses who testified in support of the subject claims against the estate, the trial court issued an Order against the estate. Thus, the administratrix Melecia Sy appealed.

ISSUE:

Whether or not the Dead Man's Statute is applicable

RULING:

NO. As for the administratrix's invocation of the Dead Man's Statute, the same does not likewise lie. The rule renders incompetent: *1) parties to a case; 2) their assignors; or 3) persons in whose behalf a case is prosecuted*. The rule is exclusive and cannot be construed to extend its scope by implication so as to disqualify persons not mentioned therein. ***Mere witnesses who are not included in the above enumeration are not prohibited from testifying as to a conversation or transaction between the deceased and a third person, if he took no active part therein*.**

Jade is not a party to the case. Neither is she an assignor nor a person in whose behalf the case is being prosecuted. She testified as a witness to the transaction. In transactions similar to those involved in the case at bar, the witnesses are commonly family members or relatives of the parties. Should their testimonies be excluded due to their apparent interest as a result of their relationship to the parties, there would be a dearth of evidence to prove the transactions. In any event, as will be discussed later, independently of the testimony of Jade, the claims of the Montinolas would still prosper on the basis of their documentary evidence—the checks.

Further, Petitioners argue that the testimonies of Sanson and Celedonia as witnesses to each other's claim against the deceased are not covered by the Dead Man's Statute. The administratrix, on the other hand, cites the ruling of the Court of Appeals in its decision on review, the pertinent portion of which reads:

The more logical interpretation is to prohibit *parties* to a *case, with like interest*, from testifying in each other's favor as to acts occurring prior to the death of the deceased.

Since the law disqualifies parties to a case or assignors to a case without distinguishing between testimony in his own behalf and that in behalf of others, he should be disqualified from testifying for his co-parties. The law speaks of "*parties or assignors of parties to a case*." Apparently, the testimonies of Sanson and Saquin on each other's behalf, as co-parties to the same case, falls under the prohibition.

But Sanson's and Celedonia's claims against the same estate arose from separate transactions. Sanson is a third party with respect to Celedonia's claim. And Celedonia is a third party with respect to Sanson's claim. One is not thus disqualified to testify on the other's transaction.

In any event, what the Dead Man's Statute proscribes is the admission of *testimonial* evidence upon a claim which arose before the death of the deceased. The incompetency is confined to the *giving of testimony*. Since the separate claims of Sanson and Celedonia are supported by checks-*documentary* evidence, their claims can be prosecuted on the bases of said checks.

ROSITA G. TAN, EUSEBIO V. TAN, REMIGIO V. TAN, JR., EUFROSINA V. TAN, VIRGILIO V. TAN and EDUARDO V. TAN, *Petitioners*, vs. COURT OF APPEALS and FERNANDO V. TAN KIAT, *Respondents.*
G.R. No. 125861, September 9, 1998, SECOND DIVISION, Martinez, J.

On the other hand, private respondent relies simply on the allegation that he is entitled to the properties by virtue of a sale between him and Alejandro Tan Keh who is now dead. Obviously, private respondent

will rely on parol evidence which, under the circumstances obtaining, cannot be allowed without violating the "Dead Man's Statute" found in Section 23, Rule 130 of the Rules of Court.

FACTS:

Fernando Tan Kiat, in his complaint claimed that he bought the subject properties from Mr. Tan Keh in 1954, built his house thereon, but was unable to effect immediate transfer of title in his favor in view of his foreign nationality at the time of the sale. Nonetheless, as an assurance in good faith of the sales agreement, Mr. Tan Keh turned over to private respondent the owner's duplicate copy and, in addition, executed a lease contract in favor of private respondent for a duration of forty (40) years.

However, in 1958, Mr. Tan Keh sold the subject properties **to Remigio Tan, his brother** and father of petitioners, with the understanding that the subject properties are to be held in trust by Remigio **for the benefit of private respondent and that Remigio would execute the proper documents of transfer in favor of private respondent should the latter at anytime demand recovery of the subject properties**. TCT No. 53284 was then issued in the name of Remigio. Another contract of lease was executed by Mr. Tan Keh and Remigio in favor of private respondent to further safeguard the latter's interest on the subject properties, but private respondent never paid any rental and no demand whatsoever for the payment thereof had been made on him.

Remigio was killed in 1968. At his wake, petitioners were reminded of private respondent's ownership of the subject properties and they promised to transfer the subject properties to private respondent who by then had already acquired Filipino citizenship by naturalization. Petitioners, however, never made good their promise to convey the subject properties despite repeated demands by private respondent.

Thus, private respondent filed a complaint for recovery of property. Petitioners on the other hand filed a Motion To Dismiss claiming, among others that the complaint stated no cause of action. The RTC indeed dismissed the complaint. On appeal however, the CA set aside the order of dismissal. Thus, this petition.

ISSUE:

Whether or not private respondent's complaint stated a cause of action against petitioners.

RULING:

NO. Petitioners are in possession of TCT No. 117898 which evidences their ownership of the subject properties. **On the other hand, private respondent relies simply on the allegation that he is entitled to the properties by virtue of a sale between him and Alejandro Tan Keh who is now dead. Obviously, private respondent will rely on parol evidence which, under the circumstances obtaining, cannot be allowed without violating the "Dead Man's Statute" found in Section 23, Rule 130 of the Rules of Court.** *viz*:

Sec. 23. Disqualification by reason of death or insanity of adverse party - Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to

any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

The object and purpose of the rule is to guard against the temptation to give false testimony in regard of the transaction in question on the part of the surviving party, and further to put the two parties to a suit upon terms of equality in regard to the opportunity to giving testimony. If one party to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the other party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction.

Clearly then, from a reading of the complaint itself, the annexes attached thereto and relevant laws and jurisprudence, **the complaint indeed does not spell out any cause of action.**

ENRIQUE RAZON, *Petitioner,* -versus- INTERMEDIATE APPELLATE COURT and VICENTE B. CHUIDIAN, in his capacity as Administrator of the Estate of the Deceased JUAN T. CHUIDIAN, *Respondents.*
G.R. No. 74306, March 16, 1992, DIVISION, Gutierrez, Jr. J.

In the instant case, the testimony excluded by the appellate court is that of the defendant (petitioner herein) to the affect that the late Juan Chuidian, (the father of private respondent Vicente Chuidian, the administrator of the estate of Juan Chuidian) and the defendant agreed in the lifetime of Juan Chuidian that the 1,500 shares of stock in E. Razon, Inc. are actually owned by the defendant unless the deceased Juan Chuidian opted to pay the same which never happened. The case was filed by the administrator of the estate of the late Juan Chuidian to recover shares of stock in E. Razon, Inc. allegedly owned by the late Juan T. Chuidian.

It is clear, therefore, that the testimony of the petitioner is not within the prohibition of the rule. The case was not filed against the administrator of the estate, nor was it filed upon claims against the estate.

FACTS:

In his complaint, Vicente B. Chuidian (administrator of the intestate estate of Juan Chuidian) prayed that defendants Enrique B. Razon be ordered to deliver certificates of stocks representing the shareholdings of the deceased Juan Chuidian in the E. Razon, Inc.

In his answer, Razon alleged that after organizing the E. Razon, Inc., he distributed shares of stock previously placed in the names of the withdrawing nominal incorporators to some friends including Juan T. Chuidian. The shares of stock were registered in the name of Chuidian only as nominal stockholder and with the agreement that the said shares of stock were owned and held by the Razon but Chuidian was given the option to buy the same.

The RTC ruled in favor of Razon. However, the CA reversed this ruling and held that Chuidian is the owner of the shares of stock.

Petitioner Enrique Razon now assails the appellate court's decision on its alleged misapplication of the dead man's statute rule under Section 20(a) Rule 130 of the Rules of Court. According to him, the "dead man's statute" rule is not applicable to the instant case. Moreover, **the private respondent, as plaintiff in the case did not object to his oral testimony regarding the oral agreement between him and the deceased Juan T. Chuidian that the ownership of the shares of stock was**

actually vested in the petitioner unless the deceased opted to pay the same; and that the petitioner was subjected to a rigid cross examination regarding such testimony.

ISSUE:

Whether or not the Dead Man's Statute is applicable in this case.

RULING:

NO. Section 20(a) Rule 130 of the Rules of Court (Section 23 of the Revised Rules on Evidence) States:

Sec. 20. *Disqualification by reason of interest or relationship* — The following persons cannot testify as to matters in which they are interested directly or indirectly, as herein enumerated.

(a) Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, *against an executor or administrator* or other representative of a deceased person, or against a person of unsound mind, *upon a claim or demand against the estate of such deceased person* or against such person of unsound mind, cannot testify as to any matter of fact accruing before the death of such deceased person or before such person became of unsound mind."

The reason for the rule is that if persons having a claim against the estate of the deceased or his properties were allowed to testify as to the supposed statements made by him (deceased person), many would be tempted to falsely impute statements to deceased persons as the latter can no longer deny or refute them, thus unjustly subjecting their properties or rights to false or unscrupulous claims or demands. The purpose of the law is to "guard against the temptation to give false testimony in regard to the transaction in question on the part of the surviving party."

The rule, however, delimits the prohibition it contemplates in that it is applicable to a case *against* the administrator or its representative of an estate upon a claim *against* the estate of the deceased person.

In the instant case, the testimony excluded by the appellate court is that of Razon, to the affect that the late Juan Chuidian and the him agreed in the lifetime of Juan Chuidian that the 1,500 shares of stock in E. Razon, Inc. are actually owned by Razon, unless the deceased Juan Chuidian opted to pay the same which never happened. The case was filed by the *administrator* of the estate of the late Juan Chuidian to recover shares of stock in E. Razon, Inc. allegedly owned by the late Juan T. Chuidian.

It is clear, therefore, that the testimony of the petitioner is not within the prohibition of the rule. The case was not filed *against* the administrator of the estate, nor was it filed upon claims *against* the estate.

Furthermore, the records show that the private respondent never objected to the testimony of the petitioner as regards the true nature of his transaction with the late elder Chuidian. The petitioner's testimony was subject to cross-examination by the private respondent's counsel. Hence, granting that the petitioner's testimony is within the prohibition of Section 20(a), Rule 130 of the Rules of Court, the private respondent is deemed to have waived the rule.

TERESITA P. BORDALBA, *Petitioner*, -versus- COURT OF APPEALS, HEIRS OF NICANOR JAYME,

namely, CANDIDA FLORES, EMANNUEL JAYME, DINA JAYME DEJORAS, EVELIA JAYME, and GESILA JAYME; AND HEIRS OF ASUNCION JAYME-BACLAY, namely, ANGELO JAYME-BACLAY, CARMEN JAYME-DACLAN and ELNORA JAYME BACLAY, *Respondents*.
G.R. No. 112443, January 25, 2002, FIRST DIVISION, Ynares- Santiago

As to the alleged violation of the dead man's statute, suffice it to state that said rule finds no application in the present case. The dead man's statute does not operate to close the mouth of a witness as to any matter of fact coming to his knowledge in any other way than through personal dealings with the deceased person, or communication made by the deceased to the witness.

Since the claim of private respondents and the testimony of their witnesses in the present case is based, inter alia, on the 1947 Deed of Extra-judicial Partition and other documents, and not on dealings and communications with the deceased, the questioned testimonies were properly admitted by the trial court.

FACTS:

On April 16, 1980, petitioner Teresita Bordalba was granted Free Patent over a parcel of lot in Mandaue City. Upon learning of the same, private respondents filed with the RTC the instant complaint against petitioner Teresita Bordalba praying that the patent be declared void and ordered cancelled. They also prayed that they be adjudged owners thereof.

Petitioner, on the other hand, averred that the subject lot was acquired by her through purchase from her mother, who was in possession of the lot in the concept of an owner since 1947. In her answer, petitioner traced her mother's ownership of the lot partly from the 1947 deed of extra-judicial partition presented by private respondents, and claimed that Nicanor Jayme, and Candida Flores occupied a portion of it by mere tolerance of her mother.

On May 28, 1990, the trial court, finding that fraud was employed by petitioner in obtaining the patent and the title, declared them as void and ordered its cancellation. The CA affirmed the ruling with modification.

Thus, petitioner filed the instant petition, assailing the decision of the Court of Appeals. **Petitioner contends that the testimonies given by the witnesses for private respondents which touched on matters occurring prior to the death of her mother should not have been admitted by the trial court, as the same violated the dead man's statute.**

ISSUE:

Whether or not the Dead Man's Statute is applicable.

RULING:

NO. The Court sees no reason to deviate from the findings of the trial court that petitioner resorted to fraud and misrepresentation in obtaining a free patent and title over the lot under scrutiny. The Court of Appeals correctly pointed out that misrepresentation tainted petitioner's application, insofar as her declaration that the land applied for was not occupied or claimed by any other person. Her declaration is belied by the extrajudicial partition which she acknowledged, her mother's aborted

attempt to have the lot registered, private respondents' predecessors-in-interest's opposition thereto, and by the occupancy of a portion of the said lot by Nicanor Jayme and his family since 1945.

As to the alleged violation of the dead man's statute, suffice it to state that said rule finds no application in the present case. The dead man's statute does not operate to close the mouth of a witness as to any matter of fact coming to his knowledge in any other way than through personal dealings with the deceased person, or communication made by the deceased to the witness.

Since the claim of private respondents and the testimony of their witnesses in the present case is based, inter alia, on the 1947 Deed of Extra-judicial Partition and other documents, and not on dealings and communications with the deceased, the questioned testimonies were properly admitted by the trial court.

MAXIMO ALVAREZ, *Petitioner*, -versus- SUSAN RAMIREZ, *Respondent.*
G.R. No. 143439 October 14, 2005 THIRD DIVISION, Sandoval- Gutierrez, J.

When an offense directly attacks, or directly and vitally impairs, the conjugal relation, it comes within the exception to the statute that one shall not be a witness against the other except in a criminal prosecution for a crime committee (by) one against the other.'"

Obviously, the offense of arson attributed to petitioner, directly impairs the conjugal relation between him and his wife Esperanza. His act, as embodied in the Information for arson filed against him, eradicates all the major aspects of marital life such as trust, confidence, respect and love by which virtues the conjugal relationship survives and flourishes.

FACTS:

Susan Ramirez is the complaining witness in for arson pending before the RTC Malabon City. The accused is Maximo Alvarez, herein petitioner. He is the husband of Esperanza G. Alvarez, sister of respondent.

On June 21, 1999, the private prosecutor called Esperanza Alvarez to the witness stand as the first witness against Alvarez. Petitioner and his counsel raised no objection. However, after the direct examination, petitioner, through counsel, filed a motion to disqualify Esperanza from testifying against him pursuant to Rule 130 of the Revised Rules of Court on marital disqualification.

ISSUE:

Whether or not Esperanza Alvarez can testify against her husband in the criminal case for arson

RULING:

YES. Section 22, Rule 130 of the Revised Rules of Court provides:

"Sec. 22. Disqualification by reason of marriage. – During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants."

The reasons given for the rule are:

1. There is identity of interests between husband and wife;

2. If one were to testify for or against the other, there is consequent danger of perjury;

3. The policy of the law is to guard the security and confidences of private life, even at the risk of an occasional failure of justice, and to prevent domestic disunion and unhappiness; and

4. Where there is want of domestic tranquility there is danger of punishing one spouse through the hostile testimony of the other.

But like all other general rules, the marital disqualification rule has its own exceptions, both in civil actions between the spouses and in criminal cases for offenses committed by one against the other.

Like the rule itself, the exceptions are backed by sound reasons which, in the excepted cases, outweigh those in support of the general rule. **For instance, where the marital and domestic relations are so strained that there is no more harmony to be preserved nor peace and tranquility which may be disturbed, the reason based upon such harmony and tranquility fails. In such a case, identity of interests disappears and the consequent danger of perjury based on that identity is non-existent. Likewise, in such a situation, the security and confidences of private life, which the law aims at protecting, will be nothing but ideals, which through their absence, merely leave a void in the unhappy home.**

'The rule that the injury must amount to a physical wrong upon the person is too narrow; and the rule that any offense remotely or indirectly affecting domestic harmony comes within the exception is too broad. **The better rule is that, *when an offense directly attacks, or directly and vitally impairs, the conjugal relation, it comes within the exception* to the statute that one shall not be a witness against the other except in a criminal prosecution for a crime committee (by) one against the other.'"**

Obviously, the offense of arson attributed to petitioner, directly impairs the conjugal relation between him and his wife Esperanza. His act, as embodied in the Information for arson filed against him, eradicates all the major aspects of marital life such as trust, confidence, respect and love by which virtues the conjugal relationship survives and flourishes.

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *-versus-*
ROBERTO PANSENSOY, *Accused-Appellant.*
G. R. No. 140634, September 12, 2002, FIRST DIVISION, Carpio, J.

As the legitimate wife of appellant, Analies testimony would have been disregarded had appellant timely objected to her competency to testify under the marital disqualification rule.

However, objections to the competency of a husband and wife to testify in a criminal prosecution against the other may be waived as in the case of other witnesses generally. The objection to the competency of the spouse must be made when he or she is first offered as a witness. In this case, the incompetency was waived by appellants failure to make a timely objection to the admission of Analies testimony.

FACTS:

Roberto Pansensoy was charged for murder for killing one Hilario Reyes. During the trial, Analie Pansensoy, the legitimate wife of Pansensoy testified and identified Pansensoy to be the author of the crime. For its part, the defense presented the appellant Pansensoy as its lone witness.

The trial court accorded full faith and credence to the testimony of Analie and rejected the version of the appellant that he acted in self-defense. It found the testimony of Analie credible and observed that she remained unperturbed during the cross-examination. Pansensoy was thus declared guilty of the offense charged and was convicted.

ISSUE:

Whether or not the testimony of appellant's wife, Analie is sufficient to support appellant's conviction.

RULING:

YES. The trial court relied on Analies testimony to convict appellant and we find that her testimony is sufficient to support appellants conviction.

As the legitimate wife of appellant, Analies testimony would have been disregarded had appellant timely objected to her competency to testify under the *marital disqualification rule*. Under this rule, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latters direct descendants or ascendants. However, objections to the competency of a husband and wife to testify in a criminal prosecution against the other may be waived as in the case of other witnesses generally. The objection to the competency of the spouse must be made when he or she is first offered as a witness. In this case, the incompetency was waived by appellants failure to make a timely objection to the admission of Analies testimony.

PEOPLE OF THE PHILIPPINES, *Plaintiff-appellee*, -versus-
BERNARDO QUIDATO, JR., *Accused-appellant.*
G.R. No. 117401 October 1, 1998, THIRD DIVISION, Romero, J.

With regard to Gina Quidato's testimony, the same must also be disregarded, accused-appellant having timely objected thereto under the marital disqualification rule. As correctly observed by the court a quo, the disqualification is between husband and wife, the law not precluding the wife from testifying when it involves other parties or accused. Hence, Gina Quidato could testify in the murder case against Reynaldo and Eddie, which was jointly tried with accused-appellant's case. This testimony cannot, however, be used against accused-appellant directly or through the guise of taking judicial notice of the proceedings in the murder case without violating the marital disqualification rule. "What cannot be done directly cannot be done indirectly" is a rule familiar even to law students.

FACTS:

Accused-appellant Bernardo Quidato was charged with the crime of parricide before the Regional Trial Court of Davao. The prosecution, in offering its version of the facts, presented as its witnesses accused-appellant's brother Leo Quidato, **appellant's wife Gina Quidato**, as well as Patrolman

Lucrecio Mara. Likewise, the prosecution offered in evidence affidavits containing the extra-judicial confessions of Eddie Malita and Reynaldo Malita. The two brothers were, however, not presented by the prosecution on the witness stand. Instead, it presented Atty. Jonathan Jocom to prove that the two were assisted by counsel when they made their confessions.

Gina Quidato testified that on the evening of the next day, September 17, 1988, accused-appellant and the Malita brothers were drinking tuba at their house. She overheard the trio planning to go to her father-in-law's house to get money from the latter. She had no idea, however, as to what later transpired because she had fallen asleep before 10:00 p.m. **Accused-appellant objected to Gina Quidato's testimony on the ground that the same was prohibited by the marital disqualification rule found in Section 22 of Rule 130 of the Rules of Court. The judge, acknowledging the applicability of the so-called rule, allowed said testimony only against accused-appellant's co-accused, Reynaldo and Eddie.**

After the trial, the RTC rendered judgment finding the accused, Bernardo Quidato, Jr., guilty beyond reasonable doubt as a co-principal in the offense of Parricide, hence this appeal.

ISSUE:

Whether or not accused must be convicted of the crime charged.

RULING:

NO.

In indicting accused-appellant, the prosecution relied heavily on the affidavits executed by Reynaldo and Eddie. The two brothers were, however, not presented on the witness stand to testify on their extra-judicial confessions. The failure to present the two gives these affidavits the character of hearsay. It is hornbook doctrine that unless the affiants themselves take the witness stand to affirm the averments in their affidavits, the affidavits must be excluded from the judicial proceeding, being inadmissible hearsay. The voluntary admissions of an accused made extrajudicially are not admissible in evidence against his co-accused when the latter had not been given an opportunity to hear him testify and cross-examine him.

Likewise, the manner by which the affidavits were obtained by the police render the same inadmissible in evidence even if they were voluntarily given. The settled rule is that an uncounseled extrajudicial confession without a valid waiver of the right to counsel — that is, in writing and *in the presence of counsel*— is inadmissible in evidence. It is undisputed that the Malita brothers gave their statements to Patrolman Mara in the absence of counsel, although they signed the same in the presence of counsel the next day.

> [T]he belated arrival of a CLAO (now PAO) lawyer the following day even if prior to the actual signing of the uncounseled confession does not cure the defect (of lack of counsel) for the investigators were already able to extract incriminatory statements from accused-appellant

With regard to Gina Quidato's testimony, the same must also be disregarded, accused-appellant having timely objected thereto under the marital disqualification rule. As correctly observed by the court *a quo*, the disqualification is between husband and wife, the law not precluding the wife from testifying when it involves other parties or accused. Hence, Gina

Quidato could testify in the murder case against Reynaldo and Eddie, which was jointly tried with accused-appellant's case. This testimony cannot, however, be used against accused-appellant directly or through the guise of taking judicial notice of the proceedings in the murder case without violating the marital disqualification rule. "What cannot be done directly cannot be done indirectly" is a rule familiar even to law students.

Given the inadmissibility in evidence of Gina Quidato's testimony, as well as of Reynaldo and Eddie's extrajudicial confessions, nothing remains on record with which to justify a judgment unfavorable to accused-appellant. Admittedly, accused-appellant's defense, to put it mildly, is dubious. Yet, the prosecution cannot rely on the weakness of the defense to gain a conviction, but must establish beyond reasonable doubt every circumstance essential to the guilt of the accused. This the prosecution has failed to demonstrate.

ROSA F. MERCADO, *Complainant,* -versus- ATTY. JULITO D. VITRIOLO, *Respondent.*
A.C. No. 5108, May 26, 2005, SECOND DIVISION, Puno, J.

In fine, the factors of attorney- client relationship are:

(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.

(2) The client made the communication in confidence.

(3) The legal advice must be sought from the attorney in his professional capacity.

Applying all the rules to the case at bar, we hold that the evidence on record fails to substantiate complainant's allegations. We note that complainant did not even specify the alleged communication in confidence disclosed by respondent. All her claims were couched in general terms and lacked specificity. She contends that respondent violated the rule on privileged communication when he instituted a criminal action against her for falsification of public documents because the criminal complaint disclosed facts relating to the civil case for annulment then handled by respondent. She did not, however, spell out these facts which will determine the merit of her complaint. The Court cannot be involved in a guessing game as to the existence of facts which the complainant must prove.

FACTS:

On April 13, 1999, Atty. Vitriolo filed a criminal action against complainant Mercado before the Office of the City Prosecutor, Pasig City, for violation of Articles 171 and 172 (falsification of public document) of the Revised Penal Code. Respondent alleged that complainant made false entries in the Certificates of Live Birth of her children, Angelica and Katelyn Anne.

It appears that Atty. Vitriolo was the former counsel of Mercado in an annulment of marriage case filed against her by her husband.

Mercado alleged that said criminal complaint for falsification of public document disclosed confidential facts and information relating to the civil case for annulment, then handled by respondent Vitriolo as her counsel. This prompted her to bring this action against respondent. She claims that, in filing the criminal case for falsification, respondent is guilty of breaching their privileged and confidential lawyer-client relationship, and should be disbarred.

Respondent maintains that his filing of the criminal complaint for falsification of public documents against complainant does not violate the rule on privileged communication between attorney and client because the bases of the falsification case are two certificates of live birth which are public documents and in no way connected with the confidence taken during the engagement of respondent as counsel. According to respondent, the complainant confided to him as then counsel only matters of facts relating to the annulment case. Nothing was said about the alleged falsification of the entries in the birth certificates of her two daughters. The birth certificates are filed in the Records Division of CHED and are accessible to anyone.

ISSUE:

Whether or not respondent violated the rule on privileged communication between attorney and client when he filed a criminal case for falsification of public document against his former client.

RULING:

Dean Wigmore cites the factors essential to establish the existence of the privilege, *viz*: (1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived.

In fine, the factors are as follows:

(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.

Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.

On the other hand, a communication from a (prospective) client to a lawyer for some purpose other than on account of the (prospective) attorney-client relation is not privileged. Instructive is the case of **Pfleider v. Palanca**, where the client and his wife leased to their attorney a 1,328-hectare agricultural land for a period of ten years. In their contract, the parties agreed, among others, that a specified portion of the lease rentals would be paid to the client-lessors, and the remainder would be delivered by counsel-lessee to client's listed creditors. The client alleged that the list of creditors which he had "confidentially" supplied counsel for the purpose of carrying out the terms of payment contained in the lease contract was disclosed by counsel, in violation of their lawyer-client relation, to parties whose interests are adverse to those of the client. As the client himself, however, states, in the execution of the terms of the aforesaid lease contract between the parties, he furnished counsel with the "confidential" list of his creditors. We ruled that this indicates that client delivered the list of his creditors to counsel not because of the professional relation then existing between them, but on account of the lease agreement. We then held that a violation of the confidence that accompanied

the delivery of that list would partake more of a private and civil wrong than of a breach of the fidelity owing from a lawyer to his client.

(2) The client made the communication in confidence.

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential

A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given.

Our jurisprudence on the matter rests on quiescent ground. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.

(3) The legal advice must be sought from the attorney in his professional capacity.

The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.

If the client seeks an accounting service, or business or personal assistance, and not legal advice, the privilege does not attach to a communication disclosed for such purpose.

Applying all these rules to the case at bar, we hold that the evidence on record fails to substantiate complainant's allegations. We note that complainant did not even specify the alleged communication in confidence disclosed by respondent. All her claims were couched in general terms and lacked specificity. She contends that respondent violated the rule on privileged communication when he instituted a criminal action against her for falsification of public documents because the criminal complaint disclosed facts relating to the civil case for annulment then handled by respondent. She did not, however, spell out these facts which will determine the merit of her complaint. The Court cannot be involved in a guessing game as to the existence of facts which the complainant must prove. Indeed, complainant failed to attend the hearings at the IBP. Without any testimony from the complainant as to the specific confidential information allegedly divulged by respondent without her consent, it is difficult, if not impossible to determine if there was any violation of the rule on privileged communication. Such confidential information is a crucial link in establishing a breach of the rule on privileged communication between attorney and client. It is not enough to merely assert the attorney-client privilege. The burden of proving that the privilege applies is placed upon the party asserting the privilege.

TEODORO R. REGALA, EDGARDO J. ANGARA, AVELINO V. CRUZ, JOSE C. CONCEPCION, ROGELIO A. VINLUAN, VICTOR P. LAZATIN and EDUARDO U. ESCUETA, *Petitioners,* -versus-

THE HONORABLE SANDIGANBAYAN, First Division, REPUBLIC OF THE PHILIPPINES, ACTING THROUGH THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, and RAUL S. ROCO, *Respondents.*
G.R. No. 105938 September 20, 1996, EN BANC, Kapunan, J.

The circumstances involving the engagement of lawyers in the case at bench, therefore, clearly reveal that the instant case falls under the first and third exception. The attorney-client privilege, as currently worded in the Rules of Court provides the disqualification by reason of privileged communication.

FACTS:

The Presidential Commission on Good Government (PCGG), raised a complaint before the Sandiganbayan (SB) against Eduardo M. Cojuangco, Jr. and Teodoro Regala and his partners in the ACCRA law firm, for the recovery of alleged ill-gotten wealth, which includes shares of stocks in the named corporations in PCGG Case No. 33 (Civil Case No. 0033), entitled "Republic of the Philippines versus Eduardo Cojuangco, et al."

During the course of the proceedings, PCGG filed a "Motion to Admit Third Amended Complaint" which excluded private respondent Raul S. Roco from the complaint on his undertaking that he will reveal the identity of the principal/s for whom he acted as nominee/stockholder.

In their answer to the Expanded Amended Complaint, ACCRA lawyers requested that PCGG similarly grant the same treatment to them as accorded Roco. The PCGG has offered to the ACCRA lawyers the same conditions availed of by Roco but the ACCRA lawyers have refused to disclose the identities of their clients. ACCRA lawyers filed the petition for certiorari, invoking that the Honorable Sandiganbayan gravely abused its discretion.

ISSUE:

Whether or not client's identity in a case involving and acquiring companies allegedly sourced from ill-gotten wealth is privileged and disclosure of such is unethical.

RULING:

YES. The court held that the client identity in this case is privileged. As a matter of public policy, a client's identity should not be shrouded in mystery. This general rule is however qualified by some important exceptions:

1) Client identity is privileged where a strong probability exists that revealing the client's name would implicate that client in the very activity for which he sought the lawyer's advice.

2) Where disclosure would open the client to civil liability

3) Where the government's lawyers have no case against an attorney's client unless, by revealing the client's name, the said name would furnish the only link that would form the chain of testimony necessary to convict an individual of a crime.

The circumstances involving the engagement of lawyers in the case at bench, therefore, clearly reveal that the instant case falls under the first and third exception. The attorney-client privilege, as

currently worded in the Rules of Court provides the disqualification by reason of privileged communication. Rule 138 of the Rules of Court further emphasizes the importance of maintaining client confidence. Furthermore, this duty is explicitly mandated in Canon 17 of the Code of Professional Responsibility. Canon 15 of the Canons of Professional Ethics also demands a lawyer's fidelity to client. The Resolutions of respondent Sandiganbayan are hereby annulled and set aside.

PEOPLE OF THE PHILIPPINES, *Appellee*, -versus- ARTEMIO INVENCION y SORIANO, *Appellant*
G.R. No. 131636. March 5, 2003, EN BANC, Davide, J.

The filial privilege rule is not strictly a rule on disqualification because a descendant is not incompetent or disqualified to testify against an ascendant. The rule refers to a privilege not to testify, which can be invoked or waived like other privileges.

FACTS:

Artemio Invencion was charged before the RTC of Tarlac with thirteen counts of rape committed against his 16-year-old daughter, Cynthia (his daughter with his first common-law-wife, Gloria Pagala).

During the trial, the prosecution presented Elven Invencion, the son of Artemio with his second common-law wife. Elven testified that that sometime before the end of the school year in 1996, while he was sleeping in one room with his father, Cynthia, and two other younger brothers, he was awakened by Cynthia's loud cries. Looking towards her, he saw his father on top of Cynthia, doing a pumping motion.

After about two minutes, his father put on his short pants. Elven further testified that Artemio was a very strict and cruel father and a drunkard. He angrily prohibited Cynthia from entertaining any of her suitors.

The trial court convicted Artemio for one count of rape. Artemio challenges the competency and credibility of Elven as a witness. He argues that Elven, as his son, should have been disqualified as a witness against him under pursuant to the rule on filial privilege.

ISSUE:

Whether or not Elven Invencion should be disqualified as a witness pursuant to the rule on filial privilege?

RULING:

NO. The competency of Elven to testify is not affected by Section 25, Rule 130 of the Rules of Court, otherwise known as the rule on "filial privilege." This rule is not strictly a rule on disqualification because a descendant is not incompetent or disqualified to testify against an ascendant. The rule refers to a privilege not to testify, which can be invoked or waived like other privileges. As correctly observed by the lower court, Elven was not compelled to testify against his father; he chose to waive that filial privilege when he voluntarily testified against Artemio. Elven declared that he was testifying as a witness against his father of his own accord and only "to tell the truth." Hence, his testimony is entitled to full credence.

CAROLINA ABAD GONZALES, *Petitioner*, *-versus-* COURT OF APPEALS, HONORIA EMPAYNADO, CECILIA H. ABAD, MARIAN H. ABAD and ROSEMARIE S. ABAD, *Respondents.*
G.R. No. 117740,October 30, 1998, THIRD DIVISION, Romero, J.

The rule on confidential communications between physician and patient requires that: a) the action in which the advice or treatment given or any information is to be used is a civil case; b) the relation of physician and patient existed between the person claiming the privilege or his legal representative and the physician; c) the advice or treatment given by him or any information was acquired by the physician while professionally attending the patient; d) the information was necessary for the performance of his professional duty; and e) the disclosure of the information would tend to blacken the reputation of the patient.

FACTS:

On 18 April1972, petitioners Carolina Abad Gonzales, Dolores de Mesa Abad and Cesar de Mesa Tioseco sought the settlement of the intestate estate of their brother, Ricardo de Mesa Abad. In their petition, petitioners claimed that they were the only heirs of their brother as he had allegedly died a bachelor, leaving no descendants or ascendants, whether legitimate or illegitimate. Petitioners amended their petition by alleging that the real properties listed as belonging to the decedent were actually only administered by him and that the true owner was their late mother, Lucila de Mesa.

On 07 July 1972, private respondents Honoria Empaynado, Cecilia Abad Empaynado, and Marian Abad Empaynado filed a motion to set aside proceedings. In their motion, they alleged that Honoria Empaynado had been the common-law wife of Ricardo Abad for twenty-seven (27) years before his death, or from 1943 to 1971, and that during this period, their union had produced two (2) children, Cecilia Abad Empaynado and Marian Abad Empaynado. They also disclosed the existence of Rosemarie Abad, a child allegedly fathered by Ricardo Abad with another woman, Dolores Saracho. As the law awards the entire estate to the surviving children to the exclusion of collateral relatives, they charged petitioners with eliberately concealing the existence of said children in order to deprive the latter of their rights to the estate of Ricardo Abad.

Petitioners presented the affidavit of Dr. Pedro Arenas, Ricardo Abad's physician, declaring that in 1935, he had examined Ricardo Abad and found him to be infected with gonorrhea, and that the latter had become sterile as a consequence thereof.

ISSUE:

Whether or not the three (3) children were entitled to inherit

RULING:

YES. First, the evidence presented by petitioners to prove that Jose Libunao died in 1971 are, to say the least, far from conclusive. Failure to indicate on an enrolment form that ones parent is deceased is not necessarily proof that said parent was still living during the time said form was being accomplished. Furthermore, the joint affidavit of Juan Quiambao and Alejandro Ramos as to the supposed death of Jose Libunao in 1971 is not competent evidence to prove the latters death at that time, being merely secondary evidence thereof. Jose Libunaos death certificate would have been the best evidence as to when the latter died. Petitioners have, however, inexplicably failed to present the same, although there is no showing that said death certificate has been lost or destroyed as to be

unavailable as proof of Jose Libunaos death. More telling, while the records of Loyola Memorial Park show that a certain Jose *Bautista* Libunao was indeed buried there in 1971, this person appears to be different from Honoria Empaynados first husband, the latters name being Jose *Santos*Libunao. Even the name of the wife is different. Jose Bautista Libunaos wife is listed as Josefa Reyes while the wife of Jose Santos Libunao was Honoria Empaynado.

As to Dr. Arenas affidavit, the same was objected to by private respondents as being privileged communication under Section 24 (c), Rule 130 of the Rules of Court. The rule on confidential communications between physician and patient requires that: a) the action in which the advice or treatment given or any information is to be used is a civil case; b) the relation of physician and patient existed between the person claiming the privilege or his legal representative and the physician; c) the advice or treatment given by him or any information was acquired by the physician while professionally attending the patient; d) the information was necessary for the performance of his professional duty; and e) the disclosure of the information would tend to blacken the reputation of the patient.

Petitioners do not dispute that the affidavit meets the first four requisites. They assert, however, that the finding as to Ricardo Abads sterility does not blacken the character of the deceased. Petitioners conveniently forget that Ricardo Abads sterility arose when the latter contracted gonorrhea, a fact which most assuredly blackens his reputation. In fact, given that society holds virility at a premium, sterility alone, without the attendant embarrassment of contracting a sexually-transmitted disease, would be sufficient to blacken the reputation of any patient. We thus hold the affidavit inadmissible in evidence. And the same remains inadmissible in evidence, notwithstanding the death of Ricardo Abad. As stated by the trial court:

In the case of *Westover vs. Aetna Life Insurance Company*, 99 N.Y. 59, it was pointed out that: The privilege of secrecy is not abolished or terminated because of death as stated in established precedents. It is an established rule that the purpose of the law would be thwarted and the policy intended to be promoted thereby would be defeated, if death removed the seal of secrecy, from the communications and disclosures which a patient should make to his physician. After one has gone to his grave, the living are not permitted to impair his name and disgrace his memory by dragging to light communications and disclosures made under the seal of the statute.

ROMULO L. NERI, *Petitioner,* -versus- SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS, SENATE COMMITTEE ON TRADE AND COMMERCE, AND SENATE COMMITTEE ON NATIONAL DEFENSE AND SECURITY, *Respondents.*
G.R. No. 180643, March 25, 2008, EN BANC, Leonardo- De Castro, J.

Presidential communications are presumptive privilege and that the presumption can be overcome only by mere showing of public need by the branch seeking access to such conversations. In the present case, respondent Committees failed to show a compelling or critical need for the answers to the three questions in the enactment of any law under Sec. 21, Art. VI. Instead, the questions veer more towards the exercise of the legislative oversight function under Sec. 22, Art. VI.

FACTS:

Petitioner Romulo Neri, then Director General of the National Economic and Development Authority (NEDA), was invited by the respondent Senate Committees to attend their joint investigation on the alleged anomalies in the National Broadband Network (NBN) Project. This

project was contracted by the Philippine Government with the Chinese firm Zhong Xing Telecommunications Equipment (ZTE). When he testified before the Senate Committees, he disclosed that then Commission on Elections Chairman Benjamin Abalos, brokering for ZTE, offered him P200 million in exchange for his approval of the NBN Project. He further narrated that he informed President Gloria Macapagal-Arroyo about the bribery attempt and that she instructed him not to accept the bribe. However, when probed further on what they discussed about the NBN Project, petitioner refused to answer, invoking "executive privilege." In particular, he refused to answer the questions on *1.) Whether or not the President followed up the NBN Project, 2.) Whether or not she directed him to prioritize it, and 3.) Whether or not she directed him to approve it.*

Later on, respondent Committees issued a Subpoena Ad Testificandum to petitioner, requiring him to appear and testify on 20 November 2007. However, Executive Secretary Eduardo Ermita sent a letter dated 15 November to the Committees requesting them to dispense with Neri's testimony on the ground of executive privilege. Ermita invoked the privilege on the ground that "the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China," and given the confidential nature in which these information were conveyed to the President, Neri "cannot provide the Committee any further details of these conversations, without disclosing the very thing the privilege is designed to protect." Thus, on 20 November, Neri did not appear before the respondent Committees.

On 22 November, respondents issued a Show Cause Letter to Neri requiring him to show cause why he should not be cited for contempt for his failure to attend the scheduled hearing on 20 November. On 29 November, Neri replied to the Show Cause Letter and explained that he did not intend to snub the Senate hearing, and requested that if there be new matters that were not yet taken up during his first appearance, he be informed in advance so he can prepare himself. He added that his non-appearance was upon the order of the President, and that his conversation with her dealt with delicate and sensitive national security and diplomatic matters relating to the impact of the bribery scandal involving high government officials and the possible loss of confidence of foreign investors and lenders in the Philippines. Respondents found the explanation unsatisfactory, and later on issued an Order citing Neri in contempt and consequently ordering his arrest and detention at the Office of the Senate Sergeant-At-Arms until he appears and gives his testimony.

Neri filed the petition asking the Court to nullify both the Show Cause Letter and the Contempt Order for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, and stressed that his refusal to answer the three questions was anchored on a valid claim to executive privilege in accordance with the ruling in the landmark case of Senate vs. Ermita (G.R. No. 169777, 20 April 2006). For its part, the Senate Committees argued that they did not exceed their authority in issuing the assailed orders because there is no valid justification for Neri's claim to executive privilege. In addition, they claimed that the refusal of petitioner to answer the three questions violates the people's right to public information, and that the executive is using the concept of executive privilege as a means to conceal the criminal act of bribery in the highest levels of government.

ISSUE:

Whether or not the three questions that petitioner Neri refused to answer were covered by executive privilege, making the arrest order issued by the respondent Senate Committees void.

RULING:

YES. Citing the case of United States vs. Nixon (418 U.S. 683), the Court laid out the three elements needed to be complied with in order for the claim to executive privilege to be valid. These are: 1.) the protected communication must relate to a quintessential and non-delegable presidential power; 2.) it must be authored, solicited, and received by a close advisor of the President or the President himself. The judicial test is that an advisor must be in "operational proximity" with the President; and, 3.) it may be overcome by a showing of adequate need, such that the information sought "likely contains important evidence," and by the unavailability of the information elsewhere by an appropriate investigating authority.

In the present case, Executive Secretary Ermita claimed executive privilege on the argument that the communications elicited by the three questions "fall under conversation and correspondence between the President and public officials" necessary in "her executive and policy decision-making process," and that "the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China." It is clear then that the basis of the claim is a matter related to the quintessential and non-delegable presidential power of diplomacy or foreign relations.

As to the second element, the communications were received by a close advisor of the President. Under the "operational proximity" test, petitioner Neri can be considered a close advisor, being a member of the President's Cabinet.

And as to the third element, there is no adequate showing of a compelling need that would justify the limitation of the privilege and of the unavailability of the information elsewhere by an appropriate investigating authority. Presidential communications are presumptive privilege and that the presumption can be overcome only by mere showing of public need by the branch seeking access to such conversations. In the present case, respondent Committees failed to show a compelling or critical need for the answers to the three questions in the enactment of any law under Sec. 21, Art. VI. Instead, the questions veer more towards the exercise of the legislative oversight function under Sec. 22, Art. VI. As ruled in Senate vs. Ermita, "the oversight function of Congress may be facilitated by compulsory process only to the extent that it is performed in pursuit of legislation."

Neri's refusal to answer based on the claim of executive privilege does not violate the people's right to information on matters of public concern simply because Sec. 7, Art. III of the Constitution itself provides that this right is "subject to such limitations as may be provided by law."

The three questions are covered by presidential communications privilege, and that this privilege has been validly claimed by the executive department, enough to shield petitioner Neri from any arrest order the Senate may issue against him for not answering such questions.

SENATE OF THE PHILIPPINES, *Petitioners,* -versus- EDUARDO R. ERMITA, in his capacity as Executive Secretary and alter-ego of President Gloria Macapagal-Arroyo, and anyone acting in his stead and in behalf of the President of the Philippines, *Respondents.*
G.R. No. 169777, April 20, 2006, EN BANC, Carpio- Morales, J.

When an official is being summoned by Congress on a matter which, in his own judgment, might be covered by executive privilege, he must be afforded reasonable time to inform the President or the Executive Secretary of the possible need for invoking the privilege. This is necessary to provide the President or the Executive Secretary with fair opportunity to consider whether the matter indeed calls

for a claim of executive privilege. If, after the lapse of that reasonable time, neither the President nor the Executive Secretary invokes the privilege, Congress is no longer bound to respect the failure of the official to appear before Congress and may then opt to avail of the necessary legal means to compel his appearance.

FACTS:

This case is regarding the railway project of the North Luzon Railways Corporation with the China National Machinery and Equipment Group as well as the Wiretapping activity of the ISAFP, and the Fertilizer scam.

The Senate Committees sent invitations to various officials of the Executive Department and AFP officials for them to appear before Senate on Sept. 29, 2005. Before said date arrived, Executive Sec. Ermita sent a letter to Senate President Drilon, requesting for a postponement of the hearing on Sept. 29 in order to "afford said officials ample time and opportunity to study and prepare for the various issues so that they may better enlighten the Senate Committee on its investigation." Senate refused the request.

On Sept. 28, 2005, the President issued EO 464, effective immediately, which, among others, mandated that "all heads of departments of the Executive Branch of the government shall secure the consent of the President prior to appearing before either House of Congress." Pursuant to this Order, Executive Sec. Ermita communicated to the Senate that the executive and AFP officials would not be able to attend the meeting since the President has not yet given her consent. Despite the lack of consent, Col. Balutan and Brig. Gen. Gudani, among all the AFP officials invited, attended the investigation. Both faced court marshal for such attendance.

ISSUE:

Whether or not E.O. 464 contravenes the power of inquiry vested in Congress.

RULING:

To determine the constitutionality of E.O. 464, the Supreme Court discussed the two different functions of the Legislature: The power to conduct inquiries in aid of legislation and the power to conduct inquiry during question hour.

Question Hour:

The power to conduct inquiry during question hours is recognized in Article 6, Section 22 of the 1987 Constitution, which reads:

"The heads of departments may, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session."

The objective of conducting a question hour is to obtain information in pursuit of Congress' oversight function. When Congress merely seeks to be informed on how department heads are implementing the statutes which it had issued, the department heads' appearance is merely requested.

The Supreme Court construed Section 1 of E.O. 464 as those in relation to the appearance of department heads during question hour as it explicitly referred to Section 22, Article 6 of the 1987 Constitution.

In aid of Legislation:

The Legislature's power to conduct inquiry in aid of legislation is expressly recognized in Article 6, section21 of the 1987 Constitution, which reads:

"The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in, or affected by, such inquiries shall be respected."

The power of inquiry in aid of legislation is inherent in the power to legislate. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change. And where the legislative body does not itself possess the requisite information, recourse must be had to others who do possess it.

But even where the inquiry is in aid of legislation, there are still recognized exemptions to the power of inquiry, which exemptions fall under the rubric of "executive privilege". This is the power of the government to withhold information from the public, the courts, and the Congress. This is recognized only to certain types of information of a sensitive character. When Congress exercise its power of inquiry, the only way for department heads to exempt themselves therefrom is by a valid claim of privilege. They are not exempt by the mere fact that they are department heads. Only one official may be exempted from this power -- the President.

Section 2 & 3 of E.O. 464 requires that all the public officials enumerated in Section 2(b) should secure the consent of the President prior to appearing before either house of Congress. The enumeration is broad. In view thereof, whenever an official invokes E.O.464 to justify the failure to be present, such invocation must be construed as a declaration to Congress that the President, or a head of office authorized by the President, has determined that the requested information is privileged.

The letter sent by the Executive Secretary to Senator Drilon does not explicitly invoke executive privilege or that the matter on which these officials are being requested to be resource persons falls under the recognized grounds of the privilege to justify their absence. Nor does it expressly state that in view of the lack of consent from the President under E.O. 464, they cannot attend the hearing. The letter assumes that the invited official possesses information that is covered by the executive privilege. Certainly, Congress has the right to know why the executive considers the requested information privileged. It does not suffice to merely declare that the President, or an authorized head of office, has determined that it is so.

The claim of privilege under Section 3 of E.O. 464 in relation to Section 2(b) is thus invalid per se. It is not asserted. It is merely implied. Instead of providing precise and certain reasons for the claim, it merely invokes E.O. 464, coupled with an announcement that the President has not given her consent.

When an official is being summoned by Congress on a matter which, in his own judgment, might be covered by executive privilege, he must be afforded reasonable time to inform the President or the Executive Secretary of the possible need for invoking the privilege. This is necessary to provide the President or the Executive Secretary with fair opportunity to consider whether the matter indeed calls for a claim of executive privilege. If, after the lapse of that reasonable time, neither the President nor the Executive Secretary invokes the privilege, Congress is no longer bound to respect the failure of the official to appear before Congress and may then opt to avail of the necessary legal means to compel his appearance.

THE PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- MILLANO MUIT, SERGIO PANCHO, JR., EDUARDO HERMANO ALIAS "BOBBY REYES," ROLANDO DEQUILLO, ROMEO PANCHO, and JOSEPH FERRAER, *Respondent*.
G.R. No. 181043 , SECOND DIVISION, October 8, 2008, TINGA, *J.*

Section 4, Rule 133 of the Revised Rules of Evidence states that circumstantial evidence is sufficient if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

FACTS:

Joseph Ferraer (Ferraer) was introduced by his relative, Orestes Julaton (Julaton), to Sergio Pancho, Sr. (Pancho, Sr.), Sergio Pancho, Jr. (Pancho, Jr.), Rolando Dequillo (Dequillo), and four other men. All the men arrived at Ferraer's house in Batangas expressing their intent to use his house as a safehouse for their "visitor." Ferraer was hesitant at first but he was told not to worry because they are not killers and their line of work is kidnap for ransom. Ferraer was also assured that the money they would get would be divided equally among them. Ferraer and Pancho, Sr. would guard their victim. Later, five other men came. One of them was Muit.

Romeo Pancho (Romeo) served as the group's informant. One day, Romeo informed them of the presence of the victim in the construction site. Roger Seraspe (Seraspe), the victim's driver, drove the latter in a Pajero to the construction site together with one engineer. The victim and the engineers alighted the Pajero. In the construction site, the engineers and Seraspe were threated with a gun to lie prostate on e ground. Seraspe witnessed as the victim was taken away in the Pajero. Seraspe immediately reported the incident to the police. The police then barricaded several roads leading to Lipa whereupon they caught the Pajero. An exchange of gunshots took place, the victim was one of the casualties, while Muit escaped but was subsequently apprehended.

Based on the foregoing, two separate informations charged Muit et al. with kidnapping for ransom with homicide and carnapping. The Regional Trial Court (RTC) rendered judgement declaring Muit, Pancho, Jr., Dequillo, and Romeo quilty. The Court of Appeals (CA) affirmed the decision of the RTC on appeal.

ISSUE:

Whether or not the RTC erred in finding them guilty beyond reasonable doubt of the charges against them?

RULING:

Section 4, Rule 133 of the Revised Rules of Evidence states that circumstantial evidence is sufficient if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The extra judicial confessions of Pancho, Jr., Dequillo, and Muit strengthened the case against them. There is nothing on record to support appellants' claim that they were coerced and tortured into executing their extra judicial confessions. One of the indicia of voluntariness in the execution of appellants' extra judicial statements is that each contains many details and facts which the investigating officers could not have known and could not have supplied, without the knowledge and information given by appellants. Moreover, the appellants were assisted by their lawyers when they executed their statements. Atty. Mallare testified that Pancho, Jr. and Dequillo executed their statements voluntarily and affixed their signatures after he talked with them alone and informed them of their constitutional rights. Muit, on the other hand, was assisted by counsels in each instance when he executed his two extra judicial confessions; his second statement was even witnessed by his uncle, Bonifacio, and his brother, Dominador. Muit cannot just conveniently disclaim any knowledge of the contents of his extra judicial confession. Nevertheless, in Muit's case, he was also positively identified by Seraspe and Chavez as the one who pointed a gun at them during the kidnapping and ordered them to lay prostrate on the ground.

Appellants' claims of torture are not supported by medical certificates from the physical examinations done on them. These claims of torture were mere afterthoughts as they were raised for the first time during trial; appellants did not even inform their family members who visited them while they were imprisoned about the alleged tortures. Dequillo, for his part, also had the opportunity to complain of the alleged torture done to him to the Department of Justice when he was brought there. Claims of torture are easily concocted, and cannot be given credence unless substantiated by competent and independent corroborating evidence.

The extra judicial confessions of Pancho, Jr., Dequillo, and Muit also strengthened the prosecution's case against Romeo. The rule that an extra judicial confession is evidence only against the person making it recognizes various exceptions. One such exception is where several extra judicial statements had been made by several persons charged with an offense and there could have been no collusion with reference to said several confessions, the fact that the statements are in all material respects identical is confirmatory of the confession of the co-defendants and is admissible against other persons implicated therein. They are also admissible as circumstantial evidence against the person implicated therein to show the probability of the latter's actual participation in the commission of the crime and may likewise serve as corroborative evidence if it is clear from other facts and circumstances that other persons had participated in the perpetration of the crime charged and proved. These are known as "interlocking confessions." Nonetheless, the RTC, in convicting Romeo, relied not only on the aforesaid extra judicial statements but also on Ferraer's testimony that Romeo was introduced to him in his house as the informant when they were planning the kidnapping.

THE PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus-
HERMINIANO SATORRE AND EMIANO SATORRE, *Respondent*.
G.R. No. 133858 , FIRST DIVISION, August 12, 2003, YNARES-SANTIAGO, *J.*

Rule 130, Section 26 of the Rules of Court defines an admission as an "act, declaration or omission of a party as to a relevant fact." A confession, on the other hand, under Section 33 of the same Rule is the "declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein." Both may be given in evidence against the person admitting or confessing. On the whole, a confession, as distinguished from an admission, is a declaration made at any time by a person, voluntarily and without compulsion or inducement, stating or acknowledging that he had committed or participated in the commission of a crime.

FACTS:

That on or about the 25th day of May, 1997 at 2:00 o'clock dawn, more or less, in Sitio Kamari, Barangay Calidngan, Municipality of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with the use of .38 paltik revolver and by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and shoot ROMERO PANTILGAN, hitting the latter at the head which caused his instantaneous death.

On arraignment, appellant pleaded "not guilty". Trial on the merits then ensued.

Gliceria Saraum, wife of the victim Romero Pantilgan, testified that at 2:00 a.m. of May 25, 1997, she and her two children were asleep inside the house of her parents at Tagaytay, Calidngan, Carcar, Cebu. Her mother, Florida Saraum, was also in the house. Her husband, Romero, went out to attend a fiesta. While she was asleep, she was awakened by a gunshot. Gliceria got up and went out to the porch, where she found her dead husband lying on the ground. Blood oozed out of a gunshot wound on his head.

Rufino Abayata, a *barangay kagawad,* testified that around 7:00 a.m. of May 25, 1997, his fellow *barangay kagawad,* Pio Alvarado, fetched him from his house and, together, they went to verify a report regarding a dead person on the porch of the Saraum residence. Upon confirming the incident, they reported the matter to the Carcar Police. Rufino further narrated that appellant's father, Abraham Satorre, informed them that it was appellant who shot Pantilgan. They looked for appellant in the house of his brother, Felix Satorre, at Dumlog, Talisay, Cebu, but were told that he already left. Nevertheless, appellant's brothers, Margarito and Rosalio Satorre, went to Rufino's house and surrendered the gun which was allegedly used in killing Pantilgan.

Flavio Gelle narrated that he accompanied appellant and his father, Abraham, to the Barangay Captain of Can-asohan, Carcar, Cebu where appellant admitted killing Pantilgan. Thereafter, appellant was detained.

Corroborating Gelle's story, Cynthia Castañares, Barangay Captain of Can-asuhan, Carcar, Cebu testified that Abraham Satorre and Gelle brought appellant to her residence where he confessed having killed Pantilgan. Appellant allegedly informed her that he killed Pantilgan because the latter struck him with a piece of wood. That same evening, she went to the Carcar Police Station with appellant where she executed an affidavit. She further averred that appellant voluntarily narrated that he killed Pantilgan with the use of a handgun which he wrestled from his possession.

Dr. Plebia Villanueva, Municipal Health Officer of Carcar, Cebu certified that the cause of Pantilgan's death was gunshot wound.

Bonifacio Ayag, NBI Ballistician, testified that the deformed bullet taken from Pantilgan's head wound was fired from the gun surrendered by appellant's brothers to the Carcar Police.

Denying the charges against him, appellant claimed that he was asleep inside his house at the time of the incident. He alleged that Rufino Abayata had a grudge against him because of an incident when he tied Rufino's cow to prevent it from eating the corn in his farm. He denied having confessed to the killing of Pantilgan. He disclaimed ownership over the *paltik* .38 revolver and stated that he could not even remember having surrendered a firearm to Castañares.

Abraham Satorre corroborated appellant's testimony. He denied having accompanied appellant to Castañares' house to surrender him.

Appellant's brother, Rosalio Satorre, claimed that he never accompanied appellant to Castañares' house to surrender. His other brother, Felix, also testified that he never surrendered any firearm to anybody.

After trial, the court *a quo* gave credence to the prosecution's evidence and rendered a decision convicting appellant of Murder

ISSUE:

Whether or not the confession or admission, which was concocted by the Barangay Captain, is inadmissible in evidence for being hearsay and for being obtained without a competent and independent counsel of his choice? (YES)

RULING:

Rule 130, Section 26 of the Rules of Court defines an admission as an "act, declaration or omission of a party as to a relevant fact." A confession, on the other hand, under Section 33 of the same Rule is the "declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein." Both may be given in evidence against the person admitting or confessing. On the whole, a confession, as distinguished from an admission, is a declaration made at any time by a person, voluntarily and without compulsion or inducement, stating or acknowledging that he had committed or participated in the commission of a crime.

Evidently, appellant's alleged declaration owning up to the killing before the Barangay Captain was a confession. Since the declaration was not put in writing and made out of court, it is an oral extrajudicial confession.

The nexus that connects appellant to the killing was his alleged oral extrajudicial confession given to Barangay Captain Cynthia Castañares and two *barangay kagawads.* According to the trial court, their testimonies were positive and convincing. Appellant's retraction of his oral extrajudicial confession should not be given much credence in the assessment of evidence. However, appellant disputes the admissibility and sufficiency of the testimonial evidence offered to prove the alleged oral extrajudicial confession.

There is no question as to the admissibility of appellant's alleged oral extrajudicial confession. Indeed, as far as admissibility is concerned, Rule 130, Section 33 of the Rules of Court makes no distinction whether the confession is judicial or extrajudicial.

The rationale for the admissibility of a confession is that if it is made freely and voluntarily, a confession constitutes evidence of a high order since it is supported by the strong presumption that no sane person or one of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime, unless prompted by truth and conscience.

Accordingly, the basic test for the validity of a confession is – was it voluntarily and freely made. The term "voluntary" means that the accused speaks of his free will and accord, without inducement of any kind, and with a full and complete knowledge of the nature and consequences of the confession, and when the speaking is so free from influences affecting the will of the accused, at the time the confession was made, that it renders it admissible in evidence against him.[7] Plainly, the admissibility of a confession in evidence hinges on its voluntariness.

On the question of whether a confession is made voluntarily, the age, character, and circumstances prevailing at the time it was made must be considered. Much depends upon the situation and surroundings of the accused. This is the position taken by the courts, whatever the theory of exclusion of incriminating statements may be. The intelligence of the accused or want of it must also be taken into account. It must be shown that the defendant realized the import of his act.

In the case at bar, appellant was a 19-year old farmer who did not even finish first grade. Granting that he made the confession in the presence of Barangay Captain Castañares, he may not have realized the full import of his confession and its consequences. This is not to say that he is not capable of making the confession out of a desire to tell the truth if prompted by his conscience. What we are saying is that due to the aforesaid personal circumstances of appellant, the voluntariness of his alleged oral confession may not be definitively appraised and evaluated.

At any rate, an extrajudicial confession forms but a *prima facie* case against the party by whom it is made. Such confessions are not conclusive proof of that which they state; it may be proved that they were uttered in ignorance, or levity, or mistake; and hence, they are, at best, to be regarded as only cumulative proof which affords but a precarious support and on which, when uncorroborated, a verdict cannot be permitted to rest.

To be sure, a confession is not required to be in any particular form. It may be oral or written, formal or informal in character. It may be recorded on video tape, sound motion pictures, or tape.[14] However, while not required to be in writing to be admissible in evidence, it is advisable, if not otherwise recorded by video tape or other means, to reduce the confession to writing. This adds weight to the confession and helps convince the court that it was freely and voluntarily made. If possible the confession, after being reduced to writing, should be read to the defendant, have it read by defendant, have him sign it, and have it attested by witnesses.

Furthermore, the events alleged in the confession are inconsistent with the physical evidence. According to Barangay Captain Castañares, appellant narrated to her that during the struggle between him and the deceased, he fell to the ground after the latter hit him on the head with a piece of wood. In the autopsy report, however, Dr. Plebia Villanueva found that the entrance wound on the deceased was located at the top of the head or the crown, indicating that the victim was probably lying down when he was shot.

Indeed, an extrajudicial confession will not support a conviction where it is uncorroborated. There must be such corroboration that, when considered in connection with confession, will show the guilt

of accused beyond a reasonable doubt. Circumstantial evidence may be sufficient corroboration of a confession. It is not necessary that the supplementary evidence be entirely free from variance with the extrajudicial confession, or that it show the place of offense or the defendant's identity or criminal agency. All facts and circumstances attending the particular offense charged are admissible to corroborate extrajudicial confession.[1]

Nonetheless, the fatal gun and the slug extracted from Pantilgan's brain can not be considered as corroborative evidence. While the slug embedded in Pantilgan's brain came from the fatal gun, the prosecution was not able to conclusively establish the ownership of the gun other than the bare testimony of prosecution witnesses that appellant's brothers surrendered the gun to them. This was denied by appellant and his brothers and there was no other proof linking the gun to him.*1âwphi1*

To conclude, it must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt. In fact, unless the prosecution discharges the burden of proving the guilt of the accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.

THE PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- JULIE VILLACORTA GIL, *Respondent*. G.R. No. 172468 FIRST DIVISION, October 15, 2008, LEONARDO-DE CASTRO, *J.*

There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to the only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others.

FACTS:

The Information charging accused-appellant reads:

That on or about March 1, 1998, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully, feloniously, and deliberately set fire on a residential house located at No. 603 Sulucan St., Sampaloc, in said city, owned by ANGGE ARGUELLES, by then and there pouring kerosene on a mattress placed in a room of said house then occupied by the said accused and ignited it with a lighter, knowing it to be occupied by one or more persons, thereby causing as a consequence thereof, damage to the said house and adjacent houses in the amount of more or less P2,000,000.00, to the damage and prejudice of said owners in the aforesaid amount of P2,000,000.00, Philippine Currency; that on the occasion and by reason of said fire, one RODOLFO CABRERA, a resident/occupant of said house sustained burn injuries which were the direct and immediate cause of his death.

The accused-appellant pleaded not guilty upon arraignment

After trial, the RTC rendered its assailed decision convicting the accused-appellant of the crime charged. According to the RTC, the prosecution had presented sufficient circumstantial evidence, coupled with the written confession of the accused-appellant, to sustain her conviction of the crime charged. The RTC admitted the oral and written confessions of the accused-appellant and found the prosecution witnesses more credible than the accused-appellant.

The motion for reconsideration or new trial of the accused-appellant was denied in the *Order*[6] dated April 3, 2003 of the RTC.

This case was directly elevated to this Court for mandatory review. In a *Minute Resolution*[7] dated January 11, 2005, we referred this case to the CA for proper disposition conformably with the decision rendered in *People v. Mateo*.[8]On review, the CA rejected the assignments of error raised by the accused-appellant and affirmed her conviction of the crime charged.

On the other hand, the accused-appellant relied on her lone testimony in her defense. While she admitted the authenticity of her above-quoted written confession, she denied on the witness stand that she voluntarily wrote this confession.

The accused-appellant contends that the circumstantial evidence of the prosecution failed to produce the required quantum of proof to hold her criminally liable for the charge. She explained that prosecution witness Ronnie Gallardo saw her mattress already on fire but never saw her deliberately burn her mattress. Ronnie Gallardo neither saw nor identified any overt act which would suggest that the accused-appellant intentionally put her mattress on fire. The accused-appellant claimed that Ronnie Gallardo might have gotten anxious after he saw the raging fire and misunderstood her remark *"pabayaan mo na yan, damay-damay na tayo"* when what she meant to say after all was *"pabayaan mo na yan, madadamay tayo."* She would not have pulled out Ronnie Gallardo from the burning house had her intention been to cause injury to others. The accused-appellant also disputed the trial court's reliance on the testimony of *Kagawad* Rodolfo Lorenzo that she intentionally burned her residential house because of personal problems. She rhetorically questioned the credibility of the said prosecution witness when, as a person in authority, he failed to report to the police his supposed knowledge of what the accused-appellant was planning to do two days prior to the fire that occurred in their neighborhood.

The accused-appellant also argues that her written confession is inadmissible in evidence. She claims that she was not assisted by counsel at the time she executed the same; and that she was merely led to believe, without apprising her of its legal significance, that it would help her.

ISSUE:

Whether or not the verbal confession is admissible? (YES)

RULING:

This Court agrees with the plaintiff-appellee that the RTC has passed upon enough circumstantial evidence to hold the accused-appellant guilty beyond reasonable doubt of the crime charged. The plaintiff-appellee correctly cites the ruling in *People v. Gallarde*, 325 SCRA 835 (2000), which distinguished the two types of positive identification of a perpetrator of a crime and discussed their

legal importance, thus: Positive identification pertains essentially to proof of identity and not *per se* to that of being an eyewitness to the very act of commission of the crime.

There are two types of positive identification. A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. There may, however, be instances where, although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime as for instance when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is the second type of positive identification, which forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to the only fair and reasonable conclusion, which is that the accused is the author of the crime to the exclusion of all others.

If the actual eyewitness are the only ones allowed to possibly positively identify a suspect or accused to the exclusion of others, then nobody can ever be convicted unless there is an eyewitness, because it is basic and elementary that there can be no conviction until and unless an accused is positively identified. Such a proposition is absolutely absurd, because it is settled that direct evidence of the commission of a crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. If resort to circumstantial evidence would not be allowed to prove identity of the accused on the absence of direct evidence, then felons would go free and the community would be denied proper protection.

THE PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- CRISENTE PEPAÑO NUÑEZ, *Respondent*.
G.R. No. 209342, THIRD DIVISION, October 4, 2017, LEONEN, *J.*

The dangers of the misplaced primacy of eyewitness identification are two (2)-pronged: on one level, eyewitness identifications are inherently prone to error; on another level, the appreciation by observers, such as jurors, judges, and law enforcement officers of how an eyewitness identifies supposed culprits is just as prone to error: The problem of eyewitness reliability could not be more clearly documented.

Domestic jurisprudence recognizes that eyewitness identification is affected by "normal human fallibilities and suggestive influences.

The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. "It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one."

FACTS:

In an Information, George Marciales (Marciales), Orly Nabia (Nabia), Paul Pobre (Pobre), and a certain alias "Jun'' (Jun) were charged with robbery with homicide, under Article 294(1) of the Revised Penal Code.

At first, only Marciales and Nabia were arrested, arraigned, and tried. In its December 9, 2005 Decision, the Regional Trial Court found the offense of robbery with homicide as alleged in the Information, along with Marciales and Nabia's conspiracy with Pobre and Jun to commit this offense,

to have been established. Thus, it pronounced Marciales and Nabia guilty beyond reasonable doubt and sentenced them to death. The case against Pobrn and Jun was archived subject to revival upon their apprehension.

On July 2, 2006, accused-appellant Nunez was apprehended by the Philippine National Police Regional Intelligence Office on the premise that he was the same ''Paul Pobre" identified in the Inforn1ation. Upon arraigru11ent, Nuñez moved that the case against him be dismissed as he was not the "Paul Pobre" charged in the Information. However, prosecution witnesses identified him as one (1) of the alleged robbers and his motion to dismiss was denied. The information was then atnended to state Nuñez's name in lieu of "Paul Pobre."

During trial, the prosecution manifested that it would be adopting the evidence already presented in the course of Marciales and Nabia's trial. Apart from this, it also recalled prosecution witnesses Ronalyn Cruz (Cruz) and Relen Perez (Perez). In their testimonies, they both positively identified Nunez as among the perpetrators of the crime.

Cruz's testimony recounted that in the evening of June 22, 2000, she was working as an attendant at the Caltex gasoline station mentioned in the Infonnation. She was then sitting near the g1;1,soline pumps with her co-employees, the deceased Byron G. Dimatulac (Dimatulac) and prosecution witness Pierez. They noticed that the station's office was being held up. There were two (2) persons poking guns at and asking for money from the deceased Alex Diaz (Diaz) and Felix Regencia (Regencia). Regencia hancied money to one (1) of the robbers while the other robber reached for a can of oil. Regencia considered this as enough of a distraction to put up a fight. Regencia and Diaz grappled with the robbers. In the scuffle, Diaz shouted. At the sound of this, two (2) men ran to the office. The first was identified to be Marciales and the second, according to Cruz, was Nunez. Dimatulac also ran to the office to assist Regencia and Oiaz. Marciales then shot Dimatulac while Nunez shot Diaz. Cruz and Perez sought refuge in a computer shop. About 10 to 15 minutes later, they returned to the gasoline station where they found Diaz already dead, Dimatulac gasping for breath, and Regencia wounded and crawling. By then, the robbers were rushing towards the highway.

Perez's testimony recounted that in the evening of June 22, 2000, she was working as a sales clerk in the Caltex gasoline station adverted to in the Information. While seated with Cruz near the gasoline pumps, she saw Nuñez, who was pointing a gun at Diaz, and another man who was pointing a gun at Regencia, inside the gasoline station's office. Diaz shouted that they were being robbed. Another man then rushed to the gasoline station's office, as did her co-employee Dimatulac. A commotion ensued where the robber identified as Marciales shot Dimatulac, Diaz, and Regencia. They then ran to their employer's house.

Nunez testified in his own defense and recalled the circumstances of his apprehension. He stated that when he was apprehended on July 2, 2006, he was on his way to his aunt's fish store where he was helping since 1999 when a man approached him. He was then dragged and mauled. With his face covered, he was boarded on a vehicle and brought to Camp Vicente Lim in Laguna. He further claimed that on June 22, 2000, he was in Muzon, Taytay, Rizal with his aunt at her fish store until about 5:00 p.m. before going home. At home, his aunt's son fetched him to get pails from the store and bring them to his aunt's house.

Regional Trial Court found Nunez guilty beyond reasonable doubt of robbery with homicide and the Court of Appeals affirmed.

ISSUE:

Whether or not accused-appellant Crisente Pepaño Nuñez is the same person, earlier identified as Paul Pobre, who acted in conspiracy with Marciales and Nabia? (NO)

RULING:

Contrary to the conclusions of the Court of Appeals and Regional Trial Court, this Court finds that it has not been established beyond reasonable doubt that accused-appellant Crisente Pepaño Nuñez is thy same person identified as Paul Pobre.

The dangers of the misplaced primacy of eyewitness identification are two (2)-pronged: on one level, eyewitness identifications are inherently prone to error; on another level, the appreciation by observers, such as jurors, judges, and law enforcement officers of how an eyewitness identifies supposed culprits is just as prone to error: The problem of eyewitness reliability could not be more clearly documented. The painstaking work of the Innocence Project, Brandon Garrett, and others who have documented wrongful convictions, participated in the exonerations of the victims, and documented the role of flawed evidence of all sorts has clearly and repeatedly revealed the two-pronged problem of unreliability for eyewitness evidence: (1) eyewitness identifications are subject to substantial error, and (2) observer judgments of witness accuracy are likewise subject to substantial error. The bifurcated difficulty of misplaced reliance on eyewitness identification is borne not only by the intrinsic limitations of human memory as the basic apparatus on which the entire exercise of identification operates. It is as much the result of and is exacerbated by extrinsic factors such as environmental factors, flawed procedures, or the mere passage of time.

Domestic jurisprudence recognizes that eyewitness identification is affected by "normal human fallibilities and suggestive influences." *People v. Teehankee, Jr.,* 249 SCRA 54 (1995), introduced in this jurisdiction the totality of circumstances test, which relies on factors already identified by the United States Supreme Court in *Neil v. Biggers,* 409 U.S. 188 (1972): (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure. A witness' credibility is ascertained by considering the first two factors, *i.e.*, the witness' opportunity to view the malefactor at the time of the crime and the witness' degree of attention at that time, based on conditions of visibility and the extent of time, little and fleeting as it may have been, for the witness to be exposed to the perpetrators, peruse their features, and ascertain their identity.

The totality of circumstances test also requires a consideration of the length of time between the crime and the identification made by the witness. "It is by now a well-established fact that people are less accurate and complete in their eyewitness accounts after a long retention interval than after a short one." Ideally then, a prosecution witness must identify the suspect immediately after the incident. This Court has considered acceptable an identification made two (2) days after the commission of a crime, not so one that had an interval of five and a half (5 1/2) months. The passage of time is not the only factor that diminishes memory. Equally jeopardizing is a witness' interactions with other individuals involved in the event. As noted by cognitive psychologist Elizabeth F. Loftus, "[p]ost[-]event information can not only enhance existing memories but also change a witness' memory and even cause nonexistent details to become incorporated into a previously acquired memory."

Jurisprudence holds that inconsistencies in the testimonies of prosecution witnesses do not necessarily jeopardize the prosecution's case. This, however, is only true of minor inconsistencies that are ultimately inconsequential or merely incidental to the overarching narrative of what crime was committed; how, when, and where it was committed; and who committed it. "It is well-settled that inconsistencies on minor details do not affect credibility as they only refer to collateral matters which do not touch upon the commission of the crime itself."

Conviction in criminal cases demands proof beyond reasonable doubt. While this does not require absolute certainty, it calls for moral certainty. It is the degree of proof that appeals to a magistrate's conscience: An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

ANTONIO LEJANO, ***Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.**
G.R. No. 176389, EN BANC, December 14, 2010, ABAD, *J.*

To establish alibi, the accused must prove by positive, clear, and satisfactory evidence that (a) he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime.

FACTS:

On June 30, 1991 Estrellita Vizconde and her daughters Carmela, nineteen years old, and xxx, seven, were brutally slain at their home in Parañaque City. Following an intense investigation, the police arrested a group of suspects, some of whom gave detailed confessions. But the trial court smelled a frame-up and eventually ordered them discharged. Thus, the identities of the real perpetrators remained a mystery especially to the public whose interests were aroused by the gripping details of what everybody referred to as the Vizconde massacre.

Four years later in 1995, the National Bureau of Investigation or NBI announced that it had solved the crime. It presented star-witness Jessica M. Alfaro, one of its informers, who claimed that she witnessed the crime. She pointed to accused Hubert Jeffrey P. Webb, Antonio "Tony Boy" Lejano, Artemio "Dong" Ventura, Michael A. Gatchalian, Hospicio "Pyke" Fernandez, Peter Estrada, Miguel "Ging" Rodriguez, and Joey Filart as the culprits. She also tagged accused police officer, Gerardo Biong, as an accessory after the fact. Relying primarily on Alfaro's testimony, on August 10, 1995 the public prosecutors filed an information for rape with homicide against Webb, et al.

The Regional Trial Court of Parañaque City, presided over by Judge Amelita G. Tolentino, tried only seven of the accused since Artemio Ventura and Joey Filart remained at large.

The prosecution presented Alfaro as its main witness with the others corroborating her testimony. These included the medico-legal officer who autopsied the bodies of the victims, the security guards of Pitong Daan Subdivision, the former laundrywoman of the Webb's household, police officer Biong's former girlfriend, and Lauro G. Vizconde, Estrellita's husband.

Webb's alibi appeared the strongest since he claimed that he was then across the ocean in the United States of America. He presented the testimonies of witnesses as well as documentary and object evidence to prove this. In addition, the defense presented witnesses to show Alfaro's bad reputation for truth and the incredible nature of her testimony.

But impressed by Alfaro's detailed narration of the crime and the events surrounding it, the trial court found a credible witness in her. It noted her categorical, straightforward, spontaneous, and frank testimony, undamaged by grueling cross-examinations.

On January 4, 2000, after four years of arduous hearings, the trial court rendered judgment, finding all the accused guilty as charged and imposing on Webb, Lejano, Gatchalian, Fernandez, Estrada, and Rodriguez the penalty of reclusion perpetua and on Biong, an indeterminate prison term of eleven years, four months, and one day to twelve years. The trial court also awarded damages to Lauro Vizconde.

On appeal, the Court of Appeals affirmed the trial court's decision, modifying the penalty imposed on Biong to six years minimum and twelve years maximum and increasing the award of damages to Lauro Vizconde.

The appellate court did not agree that the accused were tried by publicity or that the trial judge was biased. It found sufficient evidence of conspiracy that rendered Rodriguez, Gatchalian, Fernandez, and Estrada equally guilty with those who had a part in raping and killing Carmela and in executing her mother and sister.

On April 20, 2010, as a result of its initial deliberation in this case, the Court issued a Resolution granting the request of Webb to submit for DNA analysis the semen specimen taken from Carmela's cadaver, which specimen was then believed still under the safekeeping of the NBI.

The Court granted the request pursuant to section 4 of the Rule on DNA Evidence to give the accused and the prosecution access to scientific evidence that they might want to avail themselves of, leading to a correct decision in the case.

Unfortunately, on April 27, 2010 the NBI informed the Court that it no longer has custody of the specimen, the same having been turned over to the trial court. The trial record shows, however, that the specimen was not among the object evidence that the prosecution offered in evidence in the case.

This outcome prompted accused Webb to file an urgent motion to acquit on the ground that the government's failure to preserve such vital evidence has resulted in the denial of his right to due process.

ISSUES:

Whether or not Webb presented sufficient evidence to prove his alibi and rebut Alfaro's testimony that he led the others in committing the crime? (YES)

RULING:

Still, Webb is not entitled to acquittal for the failure of the State to produce the semen specimen at this late stage. For one thing, the ruling in *Brady v. Maryland* that he cites has long been overtaken by the decision in *Arizona v. Youngblood*, where the U.S. Supreme Court held that due process does not require the State to preserve the semen specimen although it might be useful to the accused unless the latter is able to show bad faith on the part of the prosecution or the police. Here, the State presented a medical expert who testified on the existence of the specimen and Webb in fact sought to have the same subjected to DNA test. For, another, when Webb raised the DNA issue, the rule governing DNA evidence did not yet exist, the country did not yet have the technology for conducting the test, and no Philippine precedent had as yet recognized its admissibility as evidence. Consequently, the idea of keeping the specimen secure even after the trial court rejected the motion for DNA testing did not come up. Indeed, neither Webb nor his co-accused brought up the matter of preserving the specimen in the meantime.

The trial court and the Court of Appeals are one in rejecting as weak Webb's alibi. Their reason is uniform: Webb's alibi cannot stand against Alfaro's positive identification of him as the rapist and killer of Carmela and, apparently, the killer as well of her mother and younger sister. Because of this, to the lower courts, Webb's denial and alibi were fabricated. But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, "I saw him do it."? Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is distressing. For how else can the truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet? There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye.

Rather, to be acceptable, the positive identification must meet at least two criteria: ***First***, the positive identification of the offender must come from a credible witness. She is credible who can be trusted to tell the truth, usually based on past experiences with her. Her word has, to one who knows her, its weight in gold. And ***second***, the witness' story of what she personally saw must be believable, not inherently contrived. A witness who testifies about something she never saw runs into inconsistencies and makes bewildering claims.

Here, as already fully discussed above, Alfaro and her testimony fail to meet the above criteria. She did not show up at the NBI as a spontaneous witness bothered by her conscience. She had been hanging around that agency for sometime as a stool pigeon, one paid for mixing up with criminals and squealing on them. Police assets are often criminals themselves. She was the prosecution's worst possible choice for a witness. Indeed, her superior testified that she volunteered to play the role of a witness in the Vizconde killings when she could not produce a man she promised to the NBI.

To establish alibi, the accused must prove by positive, clear, and satisfactory evidence that (a) he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime.

If one is cynical about the Philippine system, he could probably claim that Webb, with his father's connections, can arrange for the local immigration to put a March 9, 1991 departure stamp on his passport and an October 27, 1992 arrival stamp on the same. But this is pure speculation since there had been no indication that such arrangement was made. Besides, how could Webb fix a foreign airlines' passenger manifest, officially filed in the Philippines and at the airport in the U.S. that had his name on them? How could Webb fix with the U.S. Immigration's record system those two dates in its record of his travels as well as the dates when he supposedly departed in secret from the U.S. to commit the crime in the Philippines and then return there? No one has come up with a logical and plausible answer to these questions.

The Court of Appeals rejected the evidence of Webb's passport since he did not leave the original to be attached to the record. But, while the best evidence of a document is the original, this means that the same is exhibited in court for the adverse party to examine and for the judge to see. As Court of Appeals Justice Tagle said in his dissent, the practice when a party does not want to leave an important document with the trial court is to have a photocopy of it marked as exhibit and stipulated among the parties as a faithful reproduction of the original. Stipulations in the course of trial are binding on the parties and on the court.

The U.S. Immigration certification and the computer print-out of Webb's arrival in and departure from that country were authenticated by no less than the Office of the U.S. Attorney General and the State Department. Still the Court of Appeals refused to accept these documents for the reason that Webb failed to present in court the immigration official who prepared the same. But this was unnecessary. Webb's passport is a document issued by the Philippine government, which under international practice, is the official record of travels of the citizen to whom it is issued. The entries in that passport are presumed true. The U.S. Immigration certification and computer print-out, the official certifications of which have been authenticated by the Philippine Department of Foreign Affairs, merely validated the arrival and departure stamps of the U.S. Immigration office on Webb's passport. They have the same evidentiary value. The officers who issued these certifications need not be presented in court to testify on them. Their trustworthiness arises from the sense of official duty and the penalty attached to a breached duty, in the routine and disinterested origin of such statement and in the publicity of the record.

The trial court and the Court of Appeals expressed marked cynicism over the accuracy of travel documents like the passport as well as the domestic and foreign records of departures and arrivals from airports. They claim that it would not have been impossible for Webb to secretly return to the Philippines after he supposedly left it on March 9, 1991, commit the crime, go back to the U.S., and openly return to the Philippines again on October 26, 1992. Travel between the U.S. and the Philippines, said the lower courts took only about twelve to fourteen hours. If the Court were to subscribe to this extremely skeptical view, it might as well tear the rules of evidence out of the law books and regard suspicions, surmises, or speculations as reasons for impeaching evidence. It is not that official records, which carry the presumption of truth of what they state, are immune to attack. They are not. That presumption can be overcome by evidence. Here, however, the prosecution did not bother to present evidence to impeach the entries in Webb's passport and the certifications of

the Philippine and U.S.' immigration services regarding his travel to the U.S. and back. The prosecution's rebuttal evidence is the fear of the unknown that it planted in the lower court's minds.

Webb's documented alibi altogether impeaches Alfaro's testimony, not only with respect to him, but also with respect to Lejano, Estrada, Fernandez, Gatchalian, Rodriguez, and Biong. For, if the Court accepts the proposition that Webb was in the U.S. when the crime took place, Alfaro's testimony will not hold together. Webb's participation is the anchor of Alfaro's story. Without it, the evidence against the others must necessarily fall.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- LARRY ERGUIZA, *Respondent*.
G.R. No. 171348 , THIRD DIVISION, November 26, 2008, AUSTRIA-MARTINEZ, *J.*

An offer of compromise from an unauthorized person cannot amount to an admission of the party himself.

FACTS:

Larry Erguiza was charged with one count of rape. The victim's father, testified that the family of Erguiza went to their house after the case was filed, and initially offered P50,000 and later P150,000. Albina, the mother of Erguiza admitted that she did talk with the parents of the victim, but according to her, it was the spouses who asked for P1M, later reduced to P250,000, to settle the case and that she made a counter-offer of P5,000.00.

ISSUE:

Whether or not the offer of compromise given by the mother of the accused be used as evidence of his guilt? (NO)

RULING:

This Court has ruled that in the review of rape cases, the Court is guided by the following precepts: (a) an accusation of rape can be made with facility, but it is more difficult for the accused, though innocent, to disprove it; (b) the complainant's testimony must be scrutinized with extreme caution since, by the very nature of the crime, only two persons are normally involved; and (c) if the complainant's testimony is convincingly credible, the accused may be convicted of the crime.

Generally, when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. And so long as her testimony meets the test of credibility and unless the same is controverted by competent physical and testimonial evidence, the accused may be convicted on the basis thereof. After a judicious examination of the records of the case, the Court finds that there is testimonial evidence that contradicts the findings of the RTC and CA on the basis of which no conviction beyond reasonable doubt could arise. It is the *unrebutted testimony of a credible defense witness. The testimony of Joy Agbuya (Joy) casts doubt as to the possibility of rape having taken place as narrated by complainant. In addition, the testimony of a disinterested defense witness, Juanita Angeles (Juanita) corroborated the alibi of appellant.*

An offer of compromise from an unauthorized person cannot amount to an admission of the party himself. Although the Court has held in some cases that an attempt of the parents of the accused to settle the case is an implied admission of guilt, we believe that the better rule is that for a compromise

to amount to an implied admission of guilt, the accused should have been present or at least authorized the proposed compromise. Moreover, it has been held that where the accused was not present at the time the offer for monetary consideration was made, such offer of compromise would not save the day for the prosecution.

The Court is not unmindful of the rule that the exact date of the commission of the crime of rape is extraneous to and is not an element of the offense, such that any inconsistency or discrepancy as to the same is irrelevant and is not to be taken as a ground for acquittal. Such, however, finds no application to the case at bar. AAA and Joy may differ in their testimonies as to the time they were at the mango orchard, but there could be no mistake as to the actual day when AAA was supposed to have been raped; it was the day when AAA's shorts got hooked to the fence at the mango orchard.

This Court is not unmindful of the doctrine that for alibi to succeed as a defense, appellant must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime.

What needs to be stressed is that a conviction in a criminal case must be supported by proof beyond reasonable doubt—moral certainty that the accused is guilty. The conflicting testimonies of Joy and complainant, and the testimony of Juanita that corroborated appellant's alibi preclude the Court from convicting appellant of rape with moral certainty.

Faced with two conflicting versions, the Court is guided by the equipoise rule. Thus, where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused.

It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.

RUFINA PATIS FACTORY and JESUS LUCAS, SR., *Petitioner*, -versus-
JUAN ALUSITAIN, *Respondent*.
G.R. No. 146202, THIRD DIVISION, July 14, 2004, CARPIO-MORALES, *J.*

No doubt, admissions against interest may be refuted by the declarant. It bears stressing, however, that Alusitain's Affidavit of Separation filed with the SSS is a notarial document, hence, prima facie evidence of the facts expressed therein. Since notarial documents have in their favor the presumption of regularity, to contradict the facts stated therein, there must be evidence that is clear, convincing and more than merely preponderant.

FACTS:

In March 1948, Alusitain was hired as a laborer at the Rufina Patis Factory owned and operated by petitioner Lucas.After close to forty three years or on February 19, 1991, Alusitain admittedly tendered his letter of resignation which is quoted *verbatim*:

February 19, 1991

TO:MR. JESUS LUCAS, JR.
ASSISTANT MANAGER
RUFINA PATIS FACTORY

Gentlemen:

I would like to tender my separation letter as a laborer, from your good company effective this 20th of February 1991 : May I take this opportunity to extent my heartfelt thanks to you for having given me the chance to commit myself to work in your factory from which I owe varied experiences that has made a part of me and be what I am today. Anticipating your outmost consideration on this matter. I remain.

VERY TRULY YOURS,
(Signed) JUAN A. ALUSITAIN

RECEIVED THE ABOVE SEPARATION LETTER ON THIS DAY, FEBRUARY 20, 1991.
(Signed) BY:JESUS R. LUCAS, JR.
Assistant Manager

On May 22, 1991, Alusitain executed a duly notarized affidavit of separation from employment and submitted the same on even date to the Pensions Department of the Social Security System (SSS) .The affidavit reads:

Republic of the Philippines) SSS
Quezon City)

AFFIDAVIT OF SEPARATION FROM EMPLOYMENT

I, JUAN ASERAS ALUSITAIN of legal age, 63, Filipino and residing at Int. 18 Flores St., Mal. Mla, after having [been] sworn to in accordance with law hereby depose and state;

1.That I am [a] bonafide member of the Social Security System with SSS Number 03-0107252-0

2.That I was separated from my last employer RUFINA PATIS FACTORY with address at 290 C. Arellano St., Malabon, Metro Manila on 2-20-91 and thereafter, I was never again re-employed.

3.That I cannot secure a certification of separation from my last employer because I have not reached the company applicable age of retirement.

4.That I am executing this affidavit to attest to the truth of the foregoing facts and to support my retirement paper.

FURTHER AFFIANT SAYETH NAUGHT.

(Signed)
Affiant

On January 7, 1993, Republic Act No. 7641 (R.A. 7641),[4] AN ACT AMENDING ARTICLE 287 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, BY PROVIDING FOR RETIREMENT PAY TO QUALIFIED PRIVATE SECTOR EMPLOYEES IN THE ABSENCE OF ANY RETIRMENT PLAN IN THE ESTABLISHMENT, took effect[5] providing, among other things, thusly:chanroblesvirtua1awlibrary

Art. 287. *Retirement*. Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one half ($^1/_2$) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one half ($^1/_2$) month salary shall mean fifteen (15) days plus one twelfth ($^1/_{12}$) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

Sometime in 1995, Alusitain, claiming that he retired from the company on January 31, 1995, having reached the age of 65 and due to poor health, verbally demanded from petitioner Lucas for the payment of his retirement benefits. By his computation, he claimed that he was entitled to ₱86,710.00[8] broken down as follows:

Retirement Benefits = month salary for every year of service
One-half month salary = ₱1,885.00
Years of Service = 47 years
Retirement Benefits = ₱86,710.00

Petitioner Lucas, however, refused to pay the retirement benefits of Alusitain, prompting the latter to make a written demand on September 20, 1995. Lucas, however, remained adamant in his refusal to give in to Alusitains demands.

Having failed to arrive at an amicable settlement, Alusitain filed on November 17, 1995 a complaint before the NLRC against petitioners Rufina Patis Factory and Lucas for non-payment of retirement benefits. The complaint was docketed as NLRC Case No. 00-11-07474-95.

Petitioners maintained that Alusitain had resigned from the company on February 19, 1991 per his letter of resignation and the Affidavit of Separation dated May 22, 1991.

On the other hand, while respondent admitted having tendered his letter of resignation on February 19, 1991 and executed the Affidavit of Separation on May 22, 1991, he nevertheless maintained that he continued working for petitioners until January 1995, the date of actual retirement, due to illness

and old age, and that he merely accomplished the foregoing documents in compliance with the requirements of the SSS in order to avail of his retirement benefits.

ISSUE:

Whether or not admissions against interest may be refuted by the declarant? (YES)

RULING:

It is a basic rule in evidence, however, that the burden of proof is on the part of the party who makes the allegations—*ei incumbit probatio*, *qui dicit*, *non qui negat*. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.

Respondent's letter of resignation and May 22, 1991 Affidavit of Separation which he admittedly voluntarily executed constitute admissions against his own interest. The said documents belie his claim that he retired on January 31, 1995. Being an admission against interest, the documents are the best evidence which affords the greatest certainty of the facts in dispute. The rationale for the rule is based on the presumption that no man would declare anything against himself unless such declaration was true. Thus, it is fair to presume that the declaration corresponds with the truth, and it is his fault if it does not.

While these two documents may have facilitated the release of Alusitain's retirement benefits from the SSS, hence, beneficial to him at that time, they may still be considered admissions against interest since the disserving quality of the admission is judged as of the time it is used or offered in evidence and not when such admission is made. Thus, it matters not that the admission is self-serving when it was made, so long as it is against respondent's present claim.

No doubt, admissions against interest may be refuted by the declarant. It bears stressing, however, that Alusitain's Affidavit of Separation filed with the SSS is a notarial document, hence, *prima facie* evidence of the facts expressed therein. Since notarial documents have in their favor the presumption of regularity, to contradict the facts stated therein, there must be evidence that is *clear, convincing and more than merely preponderant*.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- HONORABLE SANDIGANBAYAN (SPECIAL FIRST DIVISION), FERDINAND E. MARCOS (REPRESENTED BY HIS ESTATE/HEIRS: IMELDA R. MARCOS, MARIA IMELDA [IMEE] MARCOS-MANOTOC, FERDINAND R. MARCOS, JR. AND IRENE MARCOS-ARANETA) AND IMELDA ROMUALDEZ MARCOS, *Respondent*.
G.R. No. 152154, THIRD DIVISION, July 15, 2003, CORONA, *J.*

A negative pregnant is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, it has been held that the qualifying circumstances alone are denied while the fact itself is admitted.

FACTS:

In December 1991, Republic, through the Presidential Commission on Good Government (PCGG), filed a petition for forfeiture before the Sandiganbayan, pursuant to Republic Act 1379. The petition sought the declaration of the amount of US$356 million (now estimated to be more than US$658 million inclusive of interest) deposited in escrow in the PNB, as ill-gotten wealth of the Marcos family.

The funds were previously deposited in Swiss banks under the name of various foreign foundations. Before the case was set for pre-trial, the Marcos children and then PCGG Chairman Magtanggol Gunigundo executed a "General Agreement and the Supplemental Agreements" (hereafter "Agreements"), dated December 28, 1993, for a global settlement of the assets of the Marcos family.

The Agreement specified in its whereas clause that the Philippine government had "obtained a judgment from the Swiss Federal Tribunal on December 21, 1990, that the US$356 million belongs in principle to the Republic of the Philippines provided certain conditionalities are met..." Subsequently, the Marcos children filed a motion for the approval of said Agreements. While hearings were being conducted on the said motion, the Republic filed a motion for summary judgment and/or judgment on the pleadings.

The Sandiganbayan initially granted Republic's motion for summary judgment on the ground that "there is no issue of fact which calls for the presentation of evidence." However, it later reversed itself and denied the motion for summary judgment on the ground that the original copies of the authenticated Swiss decisions and their "authenticated translations" have not been submitted to the court.

ISSUE:

Whether or not the absence of specific denial of respondents in paragraph 22 is tantamount to admission? (YES)

RULING:

The purpose of requiring respondents to make a specific denial is to make them disclose facts which will disprove the allegations of petitioner at the trial, together with the matters they rely upon in support of such denial. Our jurisdiction adheres to this rule to avoid and prevent unnecessary expenses and waste of time by compelling both parties to lay their cards on the table, thus reducing the controversy to its true terms. As explained in *Alonso vs. Villamor*, A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is rather a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust.

Respondents' denials in their answer at the Sandiganbayan were based on their alleged lack of knowledge or information sufficient to form a belief as to the truth of the allegations of the petition. It is true that one of the modes of specific denial under the rules is a denial through a statement that the defendant is without knowledge or information sufficient to form a belief as to the truth of the material averment in the complaint. The question, however, is whether the kind of denial in respondents' answer qualifies as the specific denied called for by the rules. We do not think so. In *Morales vs. Court of Appeals*, this Court ruled that if an allegation directly and specifically charges a party with having done, performed or committed a particular act which the latter did not in fact do,

perform or commit, a categorical and express denial must be made. Here, despite the serious and specific allegations against them, the Marcoses responded by simply saying that they had no knowledge or information sufficient to form a belief as to the truth of such allegations. Such a general, self-serving claim of ignorance of the facts alleged in the petition for forfeiture was insufficient to raise an issue. Respondent Marcoses should have positively stated how it was that they were supposedly ignorant of the facts alleged.

Evidently, this particular denial had the earmark of what is called in the law on pleadings as a *negative pregnant,* that is, a denial pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied. It was in effect an admission of the averments it was directed at. Stated otherwise, a negative pregnant is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, it has been held that the qualifying circumstances alone are denied while the fact itself is admitted.

When matters regarding which respondents claim to have no knowledge or information sufficient to form a belief are plainly and necessarily within their knowledge, their alleged ignorance or lack of information will not be considered a specific denial. An unexplained denial of information within the control of the pleader, or is readily accessible to him, is evasive and is insufficient to constitute an effective denial. The form of denial adopted by respondents must be availed of *with sincerity and in good faith, and certainly not for the purpose of confusing the adverse party as to what allegations of the petition are really being chal lenged; nor should it be made for the purpose of delay*.In the instant case, the Marcoses did not only present unsubstantiated assertions but in truth attempted to mislead and deceive this Court by presenting an obviously contrived defense. Simply put, a profession of ignorance about a fact which is patently and necessarily within the pleader's knowledge or means of knowing is *as ineffective as no denial at all*. Respondents' ineffective denial thus failed to properly tender an issue and the averments contained in the petition for forfeiture were deemed judicially admitted by them.

In sum, mere denials, if unaccompanied by any fact which will be admissible in evidence at a hearing, are not sufficient to raise genuine issues of fact and will not defeat a motion for summary judgment. A summary judgment is one granted upon motion of a party for an expeditious settlement of the case, it appearing from the pleadings, depositions, admissions and affidavits that there are no important questions or issues of fact posed and, therefore, the movant is entitled to a judgment as a matter of law. A motion for summary judgment is premised on the assumption that the issues presented need not be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. It is a method sanctioned by the Rules of Court for the prompt disposition of a civil action where there exists no serious controversy. Summary judgment is a procedural device for the prompt disposition of actions in which the pleadings raise only a legal issue, not a genuine issue as to any material fact. The theory of summary judgment is that, although an answer may on its face appear to tender issues requiring trial, if it is established by affidavits, depositions or admissions that those issues are not genuine but fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for petitioner.

BIENVENIDO, ESTELITA, MACARIO, LUIS, ADELAIDE, ENRIQUITA and CLAUDIO, all surnamed, GEVERO, *Petitioner*, -versus- INTERMEDIATE APPELLATE COURT and DEL MONTE DEVELOPMENT CORPORATION, *Respondent*.

G.R. No. 77029, SECOND DIVISION, August 30, 1990, PARAS, *J.*

It is however stressed that the admission of the former owner of a property must have been made while he was the owner thereof in order that such admission may be binding upon the present owner.

FACTS:

The parcel of land under litigation is Lot No. 2476 of the Subdivision Plan Psd-37365 containing an area of 20,119 square meters and situated at Gusa, Cagayan de Oro City. Said lot was acquired by purchase from the late Luis Lancero on September 15, 1964 as per Deed of Absolute Sale executed in favor of plaintiff and by virtue of which Transfer Certificate of Title No. 4320 was issued to plaintiff (DELCOR for brevity). Luis Lancero, in turn acquired the same parcel from Ricardo Gevero on February 5, 1952 per deed of sale executed by Ricardo Gevero which was duly annotated as entry No. 1128 at the back of Original Certificate of Title No. 7610 covering the mother lot identified as Lot No. 2476 in the names of Teodorica Babangha — 1/2 share and her children: Maria; Restituto, Elena, Ricardo, Eustaquio and Ursula, all surnamed surnamed Gevero, 1/2 undivided share of the whole area containing 48,122 square meters.

Teodorica Babangha died long before World War II and was survived by her six children aforementioned. The heirs of Teodorica Babangha on October 17,1966 executed an Extra-Judicial Settlement and Partition of the estate of Teodorica Babangha, consisting of two lots, among them was lot 2476. By virtue of the extra-judicial settlement and partition executed by the said heirs of Teodorica Babangha, Lot 2476-A to Lot 2476-I, inclusive, under subdivision plan (LRC) Psd-80450 duly approved by the Land Registration Commission, Lot 2476-D, among others, was adjudicated to Ricardo Gevero who was then alive at the time of extra-judicial settlement and partition in 1966. Plaintiff (private respondent herein) filed an action with the CFI (now RTC) of Misamis Oriental to quiet title and/or annul the partition made by the heirs of Teodorica Babangha insofar as the same prejudices the land which it acquired a portion of lot 2476.

Plaintiff now seeks to quiet title and/or annul the partition made by the heirs of Teodorica Babangha insofar as the same prejudices the land which it acquired, a portion of Lot 2476. Plaintiff proved that before purchasing Lot 2476-A it first investigated and checked the title of Luis Lancero and found the same to be intact in the office of the Register of Deeds of Cagayan de Oro City. The same with the subdivision plan (Exh. "B"), the corresponding technical description (Exh. "P") and the Deed of Sale executed by Ricardo Gevero — all of which were found to be unquestionable. By reason of all these, plaintiff claims to have bought the land in good faith and for value, occupying the land since the sale and taking over from Lancero's possession until May 1969, when the defendants Abadas forcibly entered the property.

ISSUE:

Whether or not admission of the former owner of a property must have been made while he was the owner thereof binding upon the present owner? (YES)

RULING:

As to petitioners' contention that Lancero had recognized the fatal defect of the 1952 deed when he signed the document in 1968 entitled "Settlement to Avoid Litigation" (Rollo, p. 71), it is a basic rule of evidence that the right of a party cannot be prejudiced by an act, declaration, or omission of

another (Sec. 28, Rule 130, Rules of Court). This particular rule is embodied in the maxim '*res inter alios acta alteri nocere non debet.'* Under Section 31, Rule 130, Rules of Court "where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property is evidence against the former." It is however stressed that the admission of the former owner of a property must have been made while he was the owner thereof in order that such admission may be binding upon the present owner (City of Manila v. del Rosario, 5 Phil. 227 [1905]; Medel v. Avecilla, 15 Phil. 465 [1910]). Hence, Lanceros' declaration or acts of executing the 1968 document have no binding effect on DELCOR, the ownership of the land having passed to DELCOR in 1964.

Suffice it to say that the other flaws claimed by the petitioners which allegedly invalidated the 1952 deed of sale have not been raised before the trial court nor before the appellate court. It is settled jurisprudence that an issue which was neither averred in the complaint nor raised during the trial in the court below cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process. (Matienzo v. Servidad, 107 SCRA 276 [1981]; Dela Santa v. C.A., 140 SCRA 44 [1985]; Dihiansan v. C.A., 157 SCRA 434 [1987]; Anchuelo v. IAC, 147 SCRA 434 [1987]; Dulos Realty and Development Corporation v. C.A., 157 SCRA [1988]; Kamos v. IAC, G.R. No. 78282, July 5, 1989). Petitioners aver that the 1/2 share of interest of Teodorica (mother of Ricardo) in Lot 2476 under OCT No. 7610 was not included in the deed of sale as it was intended to limit solely to Ricardos' proportionate share out of the undivided 1/2 of the area pertaining to the six (6) brothers and sisters listed in the Title and that the Deed did not include the share of Ricardo, as inheritance from Teodorica, because the Deed did not recite that she was deceased at the time it was executed.

HAROLD V. TAMARGO, *Petitioner*, -versus- ROMULO AWINGAN, LLOYD ANTIPORDA and LICERIO ANTIPORDA, JR., *Respondent*.
G.R. No. 177727, THIRD DIVISION, January 19, 2010, CORONA, *J.*

This rule prescribes that the act or declaration of the conspirator relating to the conspiracy and during its existence may be given in evidence against co-conspirators provided that the conspiracy is shown by independent evidence aside from the extrajudicial confession. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that (a) the conspiracy be first proved by evidence other than the admission itself (b) the admission relates to the common object and (c) it has been made while the declarant was engaged in carrying out the conspiracy.

FACTS:

Atty. Franklin V. Tamargo and his 8-year-old daughter were shot and killed in 2003. The police had no leads on the perpetrators of the crime until a certain Reynaldo Geron surfaced and executed an affidavit wherein he stated that a certain Lucio Columna told him during a drinking spree that Atty. Tamargo was ordered killed by Lloyd Antiporda and that he (Columna) was one of those who killed Atty. Tamargo. Columna was arrested.

On March 8, 2004, Columna executed an affidavit wherein he admitted his participation as "look out" during the shooting and implicated Romulo Awingan as the gunman and one Richard Mecate. He also tagged as masterminds Licerio Antiporda, Jr. and his son, Lloyd Antiporda, ex-mayor and mayor, respectively, of Buguey, Cagayan.

Pursuant to this affidavit, petitioner Harold V. Tamargo (brother of Atty. Tamargo) filed a complaint against those implicated by Columna in the Office of the City Prosecutor of Manila. Columna affirmed his affidavit before the investigating prosecutor.

During the preliminary investigation, Licerio presented Columna's handwritten letter wherein the latter disowned the contents of his earlier affidavit and narrated how he had been tortured until he signed the extrajudicial confession. Licerio also submitted an affidavit of Columna dated May 25, 2004 wherein the latter essentially repeated the statements in his handwritten letter. The investigating prosecutor set a clarificatory hearing so that Columna could clarify his contradictory affidavits and his unsolicited letter. During the hearing, Columna categorically admitted the authorship and voluntariness of the unsolicited letter. Thus, the investigating prosecutor recommended the dismissal of the charges.

In another handwritten letter addressed to City Prosecutor, however, Columna said that he was only forced to withdraw all his statements against respondents during the clarificatory hearing because of the threats to his life inside the jail. The RTC judge denied the motion to withdraw the informations and held that based on the March 8, 2004 affidavit which Columna affirmed before the investigating prosecutor, there was probable cause to hold the accused for trial. CA reversed the decision.
Tamargo appealed. Petitioner argues that, based on the independent assessment of the Judge Daguna, there was probable cause based on the earlier affidavit of Columna. Awingan and the Antiporda's, on the other hand, contend that Columna's extrajudicial confession was inadmissible against them because of the rule on res inter alios acta.

ISSUE:

Whether or not the admission of Columna is admissible against Awingan and the Antipordas? (NO)

RULING:

It is settled that, when confronted with a motion to withdraw an Information (on the ground of lack of probable cause to hold the accused for trial based on a resolution of the DOJ Secretary), the trial court has the duty to make an independent assessment of the merits of the motion. It may either agree or disagree with the recommendation of the Secretary. Reliance alone on the resolution of the Secretary would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case. The court must itself be convinced that there is indeed no sufficient evidence against the accused.

Res inter alios acta alteri nocere non debet. The rule on *res inter alios acta* provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only on the confessant, is not admissible against his or her co-accused and is considered as hearsay against them. The reason for this rule is that: on a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.

An exception to the *res inter alios acta* rule is an admission made by a conspirator under Section 30, Rule 130 of the Rules of Court: This rule prescribes that the act or declaration of the conspirator

relating to the conspiracy and during its existence may be given in evidence against co-conspirators provided that the conspiracy is shown by independent evidence aside from the extrajudicial confession. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that (a) the conspiracy be first proved by evidence other than the admission itself (b) the admission relates to the common object and (c) it has been made while the declarant was engaged in carrying out the conspiracy. Otherwise, it cannot be used against the alleged co-conspirators without violating their constitutional right to be confronted with the witnesses against them and to cross-examine them.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- DECENA MASINAG VDA. DE RAMOS, *Respondent*.
G.R. No. 144621, FIRST DIVISION, May 9, 2003, YNARES-SANTIAGO, *J.*

The hearsay rule bars the testimony of a witness who merely recites what someone else has told him, whether orally or in writing. *The res inter alios acta rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another—it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers, and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him*.

FACTS:

Appellant Decena Masinag Vda. de Ramos assails the decision[1] of the Regional Trial Court of Lucena City, Branch 60, in Criminal Case No. 92-387, finding her and accused Cesar Osabel guilty beyond reasonable doubt of the crime of Robbery with Homicide and sentencing each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties provided by law, and to indemnify the heirs of the victims the amounts of P100,000.00 as civil indemnity and P67,800.00 as actual damages. On September 1, 1992, an Amended Information for Robbery with Double Homicide was filed against appellant Masinag, Isagani Guittap y Pengson, Wilfredo Morelos y Cruz, Cesar Osabel,Ariel Dador y De Chavez, Luisito Guilling and John Doe @ "Purcino". Upon arraignment, appellant Masinag pleaded "not guilty." Trial on the merits thereafter ensued. Accused Ariel Dador was discharged as a state witness while accused Purcino remained at large.

During the trial, state witness Ariel Dador testified that in the evening of July 15, 1992, Cesar Osabel asked him and a certain Purcino to go with him to see appellant Masinag at her house in Isabang, Lucena City. When they got there, Osabel and Masinag entered a room while Dador and Purcino waited outside the house. On their way home, Osabel explained to Dador and Purcino that he and Masinag planned to rob the spouses Romualdo and Leonila Jael. He further told them that according to Masinag, the spouses were old and rich, and they were easy to rob because only their daughter lived with them in their house.

The following day, at 7:00 p.m., Dador, Osabel, and Purcino went to the house of the Jael spouses to execute the plan. Osabel and Purcino went inside while Dador stayed outside and positioned himself approximately 30 meters away from the house. Moments later, he heard a woman shouting for help from inside the house. After two hours, Osabel and Purcino came out, carrying with them one karaoke machine and one rifle. Osabel's hands were bloodied. He explained that he had to tie both the victims' hands with the power cord of a television set before he repeatedly stabbed them, He killed the spouses so they can not report the robbery to the authorities.

Osabel ordered Dador to hire a tricycle while he and Purcino waited inside the garage of a bus line. However, when Dador returned with the tricycle, the two were no longer there. He proceeded to the house of Osabel and found him there with Purcino. They were counting the money they got from the victims. They gave him P300.00. Later, when Dador accompanied the two to Sta. Cruz, Manila to dispose of the karaoke machine, he received another P500.00. Osabel had the rifle repaired in Gulang-Gulang, Lucena City.

Dador and Osabel were subsequently arrested for the killing of a certain Cesar M. Sante. During the investigation, Dador executed an extrajudicial confession admitting complicity in the robbery and killing of the Jael spouses and implicating appellant and Osabel in said crime. The confession was given with the assistance of Atty. Rey Oliver Alejandrino, a former Regional Director of the Human Rights Commission Office. Thereafter, Osabel likewise executed an extrajudicial confession of his and appellant's involvement in the robbery and killing of the Jaels, also with the assistance of Atty. Alejandrino.

Simeon Tabor, a neighbor of the Jaels, testified that at 8:00 in the morning of July 17, 1992, he noticed that the victims, who were known to be early risers, had not come out of their house. He started calling them but there was no response. He instructed his son to fetch the victims' son, SPO1 Lamberto Jael. When the latter arrived, they all went inside the house and found bloodstains on the floor leading to the bathroom. Tabor opened the bathroom door and found the lifeless bodies of the victims.

Dr. Vicente F. Martinez performed the post-mortem examination on the bodies of the victims and testified that since rigor mortis had set in at the back of the neck of the victims, Romualdo Jael died between six to eight hours before the examination while Leonila Jael died before midnight of July 16, 1992. The cause of death of the victims was massive shock secondary to massive hemorrhage and multiple stab wounds.

Appellant Masinag, for her part, denied involvement in the robbery and homicide. She testified that she knew the victims because their houses were about a kilometer apart. She and Osabel were friends because he courted her, but they never had a romantic relationship. She further claimed that the last time she saw Osabel was six months prior to the incident. She did not know Dador and Guilling at the time of the incident. According to her, it is not true that she harbored resentment against the victims because they berated her son for stealing their daughter's handbag. On the whole, she denied any participation in a conspiracy to rob and kill the victims.

ISSUE:

Whether or not Osabel's extrajudicial confession is admissible? (NO)

RULING:

Under Rule 130, Section 36 of the Rules of Court, a witness can testify only to those facts which he knows of his own personal knowledge, *i.e.,* which are derived from his own perception; otherwise, such testimony would be hearsay. Hearsay evidence is defined as "evidence not of what the witness knows himself but of what he has heard from others." The hearsay rule bars the testimony of a witness who merely recites what someone else has told him, whether orally or in writing. In *Sanvicente v. People*, we held that when evidence is based on what was supposedly told the witness,

the same is without any evidentiary weight for being patently hearsay. Familiar and fundamental is the rule that hearsay testimony is inadmissible as evidence.

Osabel's extrajudicial confession is likewise inadmissible against appellant. The *res inter alios acta* rule provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Consequently, an extrajudicial confession is binding only upon the confessant and is not admissible against his co-accused. The reason for the rule is that, on a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.

The rule on admissions made by a conspirator, while an exception to the foregoing, does not apply in this case. In order for such admission to be admissible against a co-accused, Section 30, Rule 130 of the Rules of Court requires that there must be independent evidence aside from the extrajudicial confession to prove conspiracy. In the case at bar, apart from Osabel's extrajudicial confession, no other evidence of appellant's alleged participation in the conspiracy was presented by the prosecution. There being no independent evidence to prove it, her culpability was not sufficiently established.

Unavailing also is rule that an extrajudicial confession may be admissible when it is used as a corroborative evidence of other facts that tend to establish the guilt of his co-accused. The implication of this rule is that there must be a finding of other circumstantial evidence which, when taken together with the confession, establishes the guilt of a co-accused beyond reasonable doubt. As earlier stated, there is no other prosecution evidence, direct or circumstantial, which the extrajudicial confession may corroborate.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- KHADDAFY JANJALANI, GAMAL B. BAHARAN a.k.a. Tapay, ANGELO TRINIDAD a.k.a. Abu Khalil, GAPPAL BANNAH ASALI a.k.a. Maidan or Negro, JAINAL SALI a.k.a. Abu Solaiman, ROHMAT ABDURROHIM a.k.a. Jackie or Zaky, and other JOHN and JANE DOES, Accused, GAMAL B. BAHARAN a.k.a. Tapay, ANGELO TRINIDAD a.k.a. Abu Khalil, and ROHMAT ABDURROHIM a.k.a. Abu Jackie or Zaky, *Respondent*.
G.R. No. 188314, THIRD DIVISION, January 10, 2011, SERENO, *J.*

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 also present evidence in his behalf. The requirement to conduct a searching inquiry applies more so in cases of re-arraignment. In People v. Galvez, 378 SCRA 389 (2002), the Court noted that since accused-appellant's original plea was "not guilty," the trial court should have exerted careful effort in inquiring into why he changed his plea to "guilty."

FACTS:

On 14 February 2005, an RRCG bus was plying its usual southbound route, from its Navotas bus terminal towards its Alabang bus terminal via Epifanio de los Santos Avenue (EDSA). Around 6:30 to 7:30 in the evening, while they were about to move out of the Guadalupe-EDSA southbound bus stop,

the bus conductor noticed two men running after the bus. The two insisted on getting on the bus, so the conductor obliged and let them in.

According to Elmer Andales, the bus conductor, he immediately became wary of the two men, because, even if they got on the bus together, the two sat away from each other – one sat two seats behind the driver, while the other sat at the back of the bus. At the time, there were only 15 passengers inside the bus. He also noticed that the eyes of one of the men were reddish. When he approached the person near the driver and asked him whether he was paying for two passengers, the latter looked dumb struck by the question. He then stuttered and said he was paying for two and gave PhP20. Andales grew more concerned when the other man seated at the back also paid for both passengers. At this point, Andales said he became more certain that the two were up to no good, and that there might be a holdup.

Afterwards, Andales said he became more suspicious because both men kept on asking him if the bus was going to stop at Ayala Avenue. The witness also noticed that the man at the back appeared to be slouching, with his legs stretched out in front of him and his arms hanging out and hidden from view as if he was tinkering with something. When Andales would get near the man, the latter would glare at him. Andales admitted, however, that he did not report the suspicious characters to the police.

As soon as the bus reached the stoplight at the corner of Ayala Avenue and EDSA, the two men insisted on getting off the bus. According to Andales, the bus driver initially did not want to let them off the bus, because a Makati ordinance prohibited unloading anywhere except at designated bus stops. Eventually, the bus driver gave in and allowed the two passengers to alight. The two immediately got off the bus and ran towards Ayala Avenue. Moments after, Andales felt an explosion. He then saw fire quickly engulfing the bus. He ran out of the bus towards a nearby mall. After a while, he went back to where the bus was. He saw their bus passengers either lying on the ground or looking traumatized. A few hours after, he made a statement before the Makati Police Station narrating the whole incident. The prosecution presented documents furnished by the Department of Justice, confirming that shortly before the explosion, the spokesperson of the Abu Sayyaf Group – Abu Solaiman – announced over radio station DZBB that the group had a Valentine's Day "gift" for former President Gloria Macapagal-Arroyo. After the bombing, he again went on radio and warned of more bomb attacks.

As stipulated during pretrial, accused Trinidad gave ABS-CBN News Network an exclusive interview some time after the incident, confessing his participation in the Valentine's Day bombing incident. In another exclusive interview on the network, accused Baharan likewise admitted his role in the bombing incident. Finally, accused Asali gave a television interview, confessing that he had supplied the explosive devices for the 14 February 2005 bombing. The bus conductor identified the accused Baharan and Trinidad, and confirmed that they were the two men who had entered the RRCG bus on the evening of 14 February.

Members of the Abu Sayyaf Group – namely Khaddafy Janjalani, Gamal B. Baharan, Angelo Trinidad, Gappal Bannah Asali, Jainal Asali, Rohmat Abdurrohim a.k.a. Abu Jackie or Zaky, and other "John" and "Jane Does" – were then charged with multiple murder and multiple frustrated murder. Only Baharan, Trinidad, Asali, and Rohmat were arrested, while the other accused remain at-large.

ISSUE:

1) Whether or not the trial court gravely erred in accepting plea of guilt despite insufficiency of searching inquiry into the voluntariness and full comprehension of the consequences of the said plea? (NO)

2) WON The trial court gravely erred in finding that the guilt of accused-appellants for the crimes charged had been proven beyond reasonable doubt? (NO)

RULING:

As early as in *People v. Apduhan*, 24 SCRA 798 the Supreme Court has ruled that "all trial judges … must refrain from accepting with alacrity an accused's plea of guilty, for while justice demands a speedy administration, judges are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty, he understands fully the meaning of his plea and the import of an inevitable conviction." Thus, trial court judges are required to observe the following procedure under Section 3, Rule 116 of the Rules of Court: **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 also present evidence in his behalf. The requirement to conduct a searching inquiry applies more so in cases of re-arraignment. In *People v. Galvez*, 378 SCRA 389 (2002), the Court noted that since accused-appellant's original plea was "not guilty," the trial court should have exerted careful effort in inquiring into why he changed his plea to "guilty."

The requirement to conduct a searching inquiry should not be deemed satisfied in cases in which it was the defense counsel who explained the consequences of a "guilty" plea to the accused, as it appears in this case. In *People v. Alborida*, 359 SCRA 495 (2001), this Court found that there was still an improvident plea of guilty, even if the accused had already signified in open court that his counsel had explained the consequences of the guilty plea; that he understood the explanation of his counsel; that the accused understood that the penalty of death would still be meted out to him; and that he had not been intimidated, bribed, or threatened. We have reiterated in a long line of cases that the conduct of a searching inquiry remains the duty of judges, as they are mandated by the rules to satisfy themselves that the accused had not been under coercion or duress; mistaken impressions; or a misunderstanding of the significance, effects, and consequences of their guilty plea. This requirement is stringent and mandatory.

In *People v. Oden*, 427 SCRA 634 (2004), the Court declared that even if the requirement of conducting a searching inquiry was not complied with, "[t]he manner by which the plea of guilt is made … 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." Thus, in *People v. Nadera*, 324 SCRA 490 (2000), the Court stated: Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged.

JOSEPH E. ESTRADA, *Petitioner*, -versus- ANIANO DESIERTO, in his capacity as Ombudsman, RAMON GONZALES, VOLUNTEERS AGAINST CRIME AND CORRUPTION, GRAFT FREE PHILIPPINES FOUNDATION, INC., LEONARD DE VERA, DENNIS FUNA, ROMEO CAPULONG and ERNESTO B. FRANCISCO, JR., *Respondent*.
G.R. No. 146710-15, EN BANC, March 2, 2001, PUNO, *J.*

The Supreme Court used the totality test to arrive at the conclusion that the former President has resigned, and the reference by the Court to certain newspapers reporting the events as they happened does not make them inadmissible evidence for being hearsay as the merely buttressed known facts to the court.

The Court used the Angara Diary to decipher the intent to resign on the part of the former president—it is not unusual for courts to distill a person's subjective intent from the evidence before them.

While pressure was exerted for the former president to resign, it is difficult to believe that the pressure completely vitiated the voluntariness of his resignation.

An adoptive admission is a party's reaction as an admission of something stated or implied by the other person.—It is, however, argued that the Angara Diary is not the diary of the petitioner, hence, non-binding on him. The argument overlooks the doctrine of *adoptive admission*.

FACTS:

The case at bar stemmed from the events that transpired during EDSA II. President Joseph Estrada pursuant to the calls for resignation, left Malacanang, and pursuant to this, Gloria Macapagal.

Arroyo, then the Vice President under Estrada's reign took his place. Estrada now goes to the court to contest the legitimacy of Macapagal.

Arroyo's presidency, arguing that he never resigned as President, and hence, claims to still be the lawful President of the Philippines. Among the pieces of evidence offered to prove that Estrada had indeed resigned from the presidency is the Angara Diary, chronicling the last moments of Estrada in Malacanang.

ISSUE:

Whether or not admissions of an agent are binding on the principal? (YES)

RULING:

Petitioner insists he is the victim of prejudicial publicity. Among others, he assails the Decision for adverting to newspaper accounts of the events and occurrences to reach the conclusion that he has resigned. In our Decision, we used the totality test to arrive at the conclusion that petitioner has resigned. We referred to and analyzed events that were prior, contemporaneous and posterior to the oath-taking of respondent Arroyo as president. *All these events are facts which are well-established and cannot be refuted.* Thus, we adverted to *prior events*that built up the irresistable pressure for the petitioner to resign, x x x *All these prior events are facts which are within judicial notice by this Court. There was no need to cite their news accounts. The reference by the Court to certain newspapers reporting them as they happened does not make them inadmissible evidence for being hearsay. The news account only buttressed these facts as facts. For all his loud protestations, petitioner has not singled out any of these facts as false.*

To begin with, the *Angara Diary is not an out of court statement. The Angara Diary is part of the pleadings in the cases at bar.* Petitioner cannot complain he was not furnished a copy of the Angara

Diary. Nor can he feign surprise on its use. To be sure, the said Diary was frequently referred to by the parties in their pleadings. The three parts of the Diary published in the PDI from February 4-6, 2001 were attached as Annexes A-C, respectively, of the Memorandum of private respondents Romeo T. Capulong, et al., dated February 20, 2001. The second and third parts of the *Diary* were earlier also attached as Annexes 12 and 13 of the Comment of private respondents Capulong, et al., dated February 12, 2001. In fact, petitioner even cited in his Second Supplemental Reply Memorandum both the second part of the diary, published on February 5, 2001, and the third part, published on February 6, 2001. It was also extensively used by Secretary of Justice Hernando Perez in his *oral arguments*. Thus, petitioner had all the opportunity to contest the use of the *Diary* but unfortunately failed to do so.

Even assuming arguendo that the Angara Diary was an out of court statement, still its use is not covered by the hearsay rule. Evidence is called *hearsay* when its probative force depends, in whole or in part, on the competency and credibility of some persons other than the witness by whom it is sought to produce it. There are three reasons for excluding hearsay evidence: (1) absence of cross examination; (2) absence of demeanor evidence, and (3) absence of the oath. Not all hearsay evidence, however, is inadmissible as evidence. Over the years, a huge body of hearsay evidence has been admitted by courts due to their relevance, trustworthiness and necessity.

It is, however, argued that the Angara Diary is not the diary of the petitioner, hence, non-binding on him. The argument overlooks the doctrine of *adoptive admission*. An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an *admission of something stated or implied by the other person.* Jones explains that the "basis for admissibility of *admissions made vicariously* is that arising from the *ratification or adoption* by the party of the statements which the other person had made." To use the blunt language of Mueller and Kirkpatrick, *"this process of attribution is not mumbo jumbo but common sense."* In the *Angara Diary,* the options of the petitioner started to dwindle when the armed forces withdrew its support from him as President and commander-in-chief. Thus, Executive Secretary Angara had to ask Senate President Pimentel to advise petitioner to consider the option of *"dignified exit or resignation."* Petitioner did not object to the suggested option but simply said he could never leave the country. Petitioner's silence on this and other related suggestions can be taken as an admission by him.

Again, petitioner errs in his contention. The *res inter alios acta* rule has *several exceptions.* One of them is provided in section 29 of Rule 130 with respect to *admissions by a co-partner or agent*. Executive Secretary Angara as such was an *alter ego* of the petitioner. He was the Little President. Indeed, *he was authorized by the petitioner to act for him in the critical hours and days before he abandoned Malacañang Palace.* Thus, according to the *Angara Diary*, the petitioner told Secretary Angara: "Mula umpisa pa lang ng kampanya, Ed, ikaw na lang pinakikinggan ko. At hanggang sa huli, ikaw pa rin." (Since the start of the campaign, Ed, you have been the only one I've listened to. And now at the end, you still are.)" *This statement of full trust was made by the petitioner after Secretary Angara briefed him about the progress of the first negotiation.* True to this trust, the petitioner had to ask Secretary Angara if he would already leave Malacañang after taking their final lunch on January 20, 2001 at about 1:00 p.m. The *Angara Diary* quotes the petitioner as saying to Secretary Angara: "Ed, kailangan ko na bang umalis? (Do I have to leave now?)" Secretary Angara told him to go and he did. Petitioner cannot deny that Secretary Angara headed his team of negotiators that met with the team of the respondent Arroyo to discuss the peaceful and orderly transfer of power after his relinquishment of the powers of the presidency. The *Diary* shows that petitioner was always briefed by Secretary Angara on the progress of their negotiations. *Secretary Angara acted for and in behalf of*

the petitioner in the crucial days before respondent Arroyo took her oath as President. Consequently, *petitioner is bound by the acts and declarations of Secretary Angara.*

Under our rules of evidence, admissions of an agent (Secretary Angara) are binding on the principal (petitioner). Jones very well explains the reasons for the rule, viz.: "What is done, by agent, is done by the principal through him, as through a mere instrument. So, whatever is said by an agent, either in making a contract for his principal, or at the time and accompanying the performance of any act within the scope of his authority, having relation to, and connected with, and in the course of the particular contract or transaction in which he is then engaged, or in the language of the old writers, *dum fervet opus* is, in legal effect, said by his principal and admissible in evidence against such principal."

Moreover, *the ban on hearsay evidence does not cover independently relevant statements.* These are statements which are *relevant independently of whether they are true or not.* They belong to *two (2) classes*: (1) those statements which are the very facts in issue, and (2) those statements which are *circumstantial evidence of the facts in issue.* The second class includes the following: a. *Statement of a person showing* his *state of mind*, that is, his mental condition, knowledge, belief, intention, ill will and other emotions; b. Statements of a person which show his physical condition, as illness and the like; c. *Statements of a person* from which an *inference* may be made as to the *state of mind of another*, that is, the knowledge, belief, motive, good or bad faith, etc. of the latter; d. Statements which may identity the date, place and person in question; and e. Statements showing the lack of credibility of a witness.

BOSTON BANK OF THE PHILIPPINES, (formerly BANK OF COMMERCE), *Petitioner*, -
versus- PERLA P. MANALO and CARLOS MANALO, JR., *Respondent*.
G.R. No. 158149, FIRST DIVISION, February 9, 2006, CALLEJO, SR., *J.*

It must be stressed that the Court may consider an issue not raised during the trial when there is plain error. Although a factual issue was not raised in the trial court, such issue may still be considered and resolved by the Court in the interest of substantial justice, if it finds that to do so is necessary to arrive at a just decision, or when an issue is closely related to an issue raised in the trial court and the Court of Appeals and is necessary for a just and complete resolution of the case. When the trial court decides a case in favor of a party on certain grounds, the Court may base its decision upon some other points, which the trial court or appellate court ignored or erroneously decided in favor of a party.

FACTS:

The Xavierville Estate, Inc. (XEI) was the owner of parcels of land in Quezon City, known as the Xavierville Estate Subdivision, with an area of 42 hectares. XEI caused the subdivision of the property into residential lots, which was then offered for sale to individual lot buyers.

On September 8, 1967, XEI, through its General Manager, Antonio Ramos, as vendor, and The Overseas Bank of Manila (OBM), as vendee, executed a "Deed of Sale of Real Estate" over some residential lots in the subdivision, including Lot 1, Block 2, with an area of 907.5 square meters, and Lot 2, Block 2, with an area of 832.80 square meters. The transaction was subject to the approval of the Board of Directors of OBM, and was covered by real estate mortgages in favor of the Philippine National Bank as security for its account amounting to ₱5,187,000.00, and the Central Bank of the Philippines as security for advances amounting to ₱22,185,193.74. Nevertheless, XEI continued selling the residential lots in the subdivision as agent of OBM.

Sometime in 1972, then XEI president Emerito Ramos, Jr. contracted the services of Engr. Carlos Manalo, Jr. who was in business of drilling deep water wells and installing pumps under the business name Hurricane Commercial, Inc. For ₱34,887.66, Manalo, Jr. installed a water pump at Ramos' residence at the corner of Aurora Boulevard and Katipunan Avenue, Quezon City. Manalo, Jr. then proposed to XEI, through Ramos, to purchase a lot in the Xavierville subdivision, and offered as part of the downpayment the ₱34,887.66 Ramos owed him. XEI, through Ramos, agreed. In a letter dated February 8, 1972, Ramos requested Manalo, Jr. to choose which lots he wanted to buy so that the price of the lots and the terms of payment could be fixed and incorporated in the conditional sale.[6]Manalo, Jr. met with Ramos and informed him that he and his wife Perla had chosen Lots 1 and 2 of Block 2 with a total area of 1,740.3 square meters.

In a letter dated August 22, 1972 to Perla Manalo, Ramos confirmed the reservation of the lots. He also pegged the price of the lots at ₱200.00 per square meter, or a total of ₱348,060.00, with a 20% down payment of the purchase price amounting to ₱69,612.00 less the ₱34,887.66 owing from Ramos, payable on or before December 31, 1972; the corresponding Contract of Conditional Sale would then be signed on or before the same date, but if the selling operations of XEI resumed after December 31, 1972, the balance of the downpayment would fall due then, and the spouses would sign the aforesaid contract within five (5) days from receipt of the notice of resumption of such selling operations. It was also stated in the letter that, in the meantime, the spouses may introduce improvements thereon subject to the rules and regulations imposed by XEI in the subdivision. Perla Manalo conformed to the letter agreement.

The spouses Manalo took possession of the property on September 2, 1972, constructed a house thereon, and installed a fence around the perimeter of the lots.

In the meantime, many of the lot buyers refused to pay their monthly installments until they were assured that they would be issued Torrens titles over the lots they had purchased. The spouses Manalo were notified of the resumption of the selling operations of XEI. However, they did not pay the balance of the downpayment on the lots because Ramos failed to prepare a contract of conditional sale and transmit the same to Manalo for their signature. On August 14, 1973, Perla Manalo went to the XEI office and requested that the payment of the amount representing the balance of the downpayment be deferred, which, however, XEI rejected. On August 10, 1973, XEI furnished her with a statement of their account as of July 31, 1973, showing that they had a balance of ₱34,724.34 on the downpayment of the two lots after deducting the account of Ramos, plus ₱3,819.68 interest thereon from September 1, 1972 to July 31, 1973, and that the interests on the unpaid balance of the purchase price of ₱278,448.00 from September 1, 1972 to July 31, 1973 amounted to ₱30,629.28.[11] The spouses were informed that they were being billed for said unpaid interests.

On January 25, 1974, the spouses Manalo received another statement of account from XEI, inclusive of interests on the purchase price of the lots. In a letter dated April 6, 1974 to XEI, Manalo, Jr. stated they had not yet received the notice of resumption of Lei's selling operations, and that there had been no arrangement on the payment of interests; hence, they should not be charged with interest on the balance of the downpayment on the property. Further, they demanded that a deed of conditional sale over the two lots be transmitted to them for their signatures. However, XEI ignored the demands. Consequently, the spouses refused to pay the balance of the downpayment of the purchase price.

Sometime in June 1976, Manalo, Jr. constructed a business sign in the sidewalk near his house. In a letter dated June 17, 1976, XEI informed Manalo, Jr. that business signs were not allowed along the

sidewalk. It demanded that he remove the same, on the ground, among others, that the sidewalk was not part of the land which he had purchased on installment basis from XEI. Manalo, Jr. did not respond. XEI reiterated its demand on September 15, 1977.

Subsequently, XEI turned over its selling operations to OBM, including the receivables for lots already contracted and those yet to be sold. On December 8, 1977, OBM warned Manalo, Jr., that "putting up of a business sign is specifically prohibited by their contract of conditional sale" and that his failure to comply with its demand would impel it to avail of the remedies as provided in their contract of conditional sale.

Meanwhile, on December 5, 1979, the Register of Deeds issued Transfer Certificate of Title (TCT) No. T-265822 over Lot 1, Block 2, and TCT No. T-265823 over Lot 2, Block 2, in favor of the OBM. The lien in favor of the Central Bank of the Philippines was annotated at the dorsal portion of said title, which was later cancelled on August 4, 1980.

Subsequently, the Commercial Bank of Manila (CBM) acquired the Xavierville Estate from OBM. CBM wrote Edilberto Ng, the president of Xavierville Homeowners Association that, as of January 31, 1983, Manalo, Jr. was one of the lot buyers in the subdivision. CBM reiterated in its letter to Ng that, as of January 24, 1984, Manalo was a homeowner in the subdivision.

In a letter dated August 5, 1986, the CBM requested Perla Manalo to stop any on-going construction on the property since it (CBM) was the owner of the lot and she had no permission for such construction. She agreed to have a conference meeting with CBM officers where she informed them that her husband had a contract with OBM, through XEI, to purchase the property. When asked to prove her claim, she promised to send the documents to CBM. However, she failed to do so.[25] On September 5, 1986, CBM reiterated its demand that it be furnished with the documents promised, but Perla Manalo did not respond.

On July 27, 1987, CBM filed a complaint for unlawful detainer against the spouses with the Metropolitan Trial Court of Quezon City. The case was docketed as Civil Case No. 51618. CBM claimed that the spouses had been unlawfully occupying the property without its consent and that despite its demands, they refused to vacate the property. The latter alleged that they, as vendors, and XEI, as vendee, had a contract of sale over the lots which had not yet been rescinded.

While the case was pending, the spouses Manalo wrote CBM to offer an amicable settlement, promising to abide by the purchase price of the property (₱313,172.34), per agreement with XEI, through Ramos. However, on July 28, 1988, CBM wrote the spouses, through counsel, proposing that the price of ₱1,500.00 per square meter of the property was a reasonable starting point for negotiation of the settlement. The spouses rejected the counter proposal, emphasizing that they would abide by their original agreement with XEI. CBM moved to withdraw its complaint[31] because of the issues raised.

In the meantime, the CBM was renamed the Boston Bank of the Philippines. After CBM filed its complaint against the spouses Manalo, the latter filed a complaint for specific performance and damages against the bank before the Regional Trial Court (RTC) of Quezon City on October 31, 1989. The plaintiffs alleged therein that they had always been ready, able and willing to pay the installments on the lots sold to them by the defendant's remote predecessor-in-interest, as might be or stipulated in the contract of sale, but no contract was forthcoming; they constructed their house worth ₱2,000,000.00 on the property in good faith; Manalo, Jr., informed the defendant, through its counsel,

on October 15, 1988 that he would abide by the terms and conditions of his original agreement with the defendant's predecessor-in-interest; during the hearing of the ejectment case on October 16, 1988, they offered to pay ₱313,172.34 representing the balance on the purchase price of said lots; such tender of payment was rejected, so that the subject lots could be sold at considerably higher prices to third parties.

Plaintiffs further alleged that upon payment of the ₱313,172.34, they were entitled to the execution and delivery of a Deed of Absolute Sale covering the subject lots, sufficient in form and substance to transfer title thereto free and clear of any and all liens and encumbrances of whatever kind and nature

ISSUE:

Whether or not a factual issue not raised in the trial court, may still be considered and resolved by this Court? (YES)

RULING:

The rule is that before this Court, only legal issues may be raised in a petition for review on *certiorari*. The reason is that this Court is not a trier of facts, and is not to review and calibrate the evidence on record. Moreover, the findings of facts of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this Court unless the case falls under any of the following exceptions: (1) when the conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

It must be stressed that the Court may consider an issue not raised during the trial when there is plain error. Although a factual issue was not raised in the trial court, such issue may still be considered and resolved by the Court in the interest of substantial justice, if it finds that to do so is necessary to arrive at a just decision, or when an issue is closely related to an issue raised in the trial court and the Court of Appeals and is necessary for a just and complete resolution of the case. When the trial court decides a case in favor of a party on certain grounds, the Court may base its decision upon some other points, which the trial court or appellate court ignored or erroneously decided in favor of a party.

PEOPLE OF THE PHILIPPINES, *Petitioner*, -versus- PERLA P. MANALO and CARLOS MANALO, JR., *Respondent*.
G.R. No. 168169, FIRST DIVISION, February 24, 2010, LEONARDO-DE CASTRO., *J.*

It must be shown that a dying declaration was made under a realization by the decedent that his demise or at least, its imminence—not so much the rapid eventuation of death—is at hand

A dying declaration is entitled to the highest credence, for no person who knows of his impending death would make a careless or false accusation.

The admission by the defense that the widow incurred a particular amount in relation to the death of her husband victim is more binding to it than the failure on its part to object to the testimony.

FACTS:

Late at night, Gary Tabarnero went to the house of Ernesto Canatoy where Gary used to reside as the live-in partner of Ernesto's stepdaughter, Mary Jane Acibar. Gary and Ernesto had a confrontation during which, Ernesto was stabbed 9 times. Gary and his father, Albert Tabernero were charged with murder and on March 27, 2000, RTC issued warrants of arrest. On April 22, 2001, Gary surrendered to Barangay Tanod Edilberto Alarma while Albert remained at large.

During the arraignment Gary pleaded not guilty but in the pre-trial conference he admitted killing Ernesto but in self-defense. When the Reverse trial ensued, Gary testified that he lived with Mary Jane for 2 years at Ernesto's house but left the shortly before the incident because Ernesto stopped his planned marriage with Mary Jane, who was pregnant at that time.

Shortly before the incident, Gary was at his house together with a friend, his brother, his mother, and father, herein co-accused. Overcome with his emotion over being separated from Mary Jane, he went to Ernesto's house but was not able to enter. He shouted his pleas outside, asking what he did wrong and how much he loves Mary Jane. When he was about to leave, Ernesto struck him with a lead pipe, the former was aiming at Gary's head, but Gary was able to block the blow with his hands. Gary embraced Ernesto, but the latter strangled him. At that point, Gary took the bladed weapon tucked at Ernesto's back and stabbed him.

Gary was stunned and did not notice that his father was coming. When asked by his father about what happened, Gary responded: "Nasaksak ko po ata si Ka Erning". Then, both fled out of fear.

On August 5, 2001, Alberto was apprehended and denied the accusations. He further said that they ran away in different directions, he immediately went to Norzagaray, and did not know where Gary proceeded.

Edilberto Alarma, the barangay tanod, testified that while he was on a meeting, Gary arrived and told him of his intention to surrender and that he was responsible for the incident. He was brought to the Police Station were the surrender was entered in a blotter report.

The prosecution found that Emerito, brother of Mary Jane, who was inside their house at the time the incident happened, testified that he saw (7-8m away) his stepfather Ernesto being held by two persons while Gary and Ernesto were stabbing him with fan knives. Gary lost count of the number of thrusts made by Gary and Alberto but the last stab was made by the latter. Emerito further confirmed that Gary and Mary Jane were live-in partners and his father got mad when he knew about their relationship because they treated Gary as a member of their family.

SP02 Ronnie Morales, asked Ernesto at the hospital who stabbed him and answered that the assailants were Gary and Alberto. Ernesto however died before he was able to sign the *Sinumpaang Salaysay.*

ISSUE:

Whether or not Ernesto's statement is considered as a dying declaration? (YES)

RULING:

Even more persuasive is the statement of the victim himself, Ernesto, as testified to by SPO2 Morales, that it was "the father and son, Gary and Alberto Tabar-nero from Longos, Bulacan" who stabbed him. While Ernesto was not able to testify in court, his statement is considered admissible under Section 37, Rule 130 of the Rules of Court, which provides: Sec. 37. Dying declaration.—The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. In applying this exception to the hearsay rule, we held as follows: "It must be shown that a dying declaration was made under a realization by the decedent that his demise or at least, its imminence—not so much the rapid eventuation of death—is at hand. This may be proven by the statement of the deceased himself or it may be inferred from the nature and extent of the decedent's wounds, or other relevant circumstances."

We have considered that a dying declaration is entitled to the highest credence, for no person who knows of his impending death would make a careless or false accusation. When a person is at the point of death, every motive of falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. It is hard to fathom that Ernesto, very weak as he was and with his body already manifesting an impending demise, would summon every remaining strength he had just to lie about his true assailants, whom he obviously would want to bring to justice.

The Solicitor General claims that the award of P55,600.00 in actual damages is not proper, considering the lack of receipts supporting the same. However, we held in *People v. Torio*, 404 SCRA 623 (2003) that: Ordinarily, receipts should support claims of actual damages, but where the defense does not contest the claim, it should be granted. Accordingly, there being no objection raised by the defense on Alma Paulo's lack of receipts to support her other claims, **all the amounts testified to are accepted**. In the case at bar, Teresita Acibar's testimony was dispensed with on account of the admission by the defense that she incurred P55,600.00 in relation to the death of Ernesto. This admission by the defense is even more binding to it than a failure on its part to object to the testimony. We therefore sustain the award of actual damages by the RTC, as affirmed by the Court of Appeals.

CELESTINO MARTURILLAS, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES, *Respondent*.
G.R. No. 163217, FIRST DIVISION, April 18, 2006, PANGANIBAN, *J.*

Statements identifying the assailant, if uttered by a victim on verge of death, are entitled to the highest degree of credence and respect; The dying declaration is given credence, on the premise that no one who knows of one's impending death will make careless and false accusation; To be admissible, dying must (1) refer to the cause and circumstances surrounding the declarant's death, (2) be made under consciousness of an impending death, (3) be made freely and voluntarily without coercion or suggestions of improper influence, (4) be offered in a criminal case, in which the death of the declarant is the subject inquiry, and (5) have been made by a declarant competent to testify as witness, had that person been called to testify.

Even if the declarant did not make an explicit statement of the realization of impending death, the degree and seriousness of the wounds and the fact that death occurred shortly afterwards may be considered as sufficient evidence that the declaration was made by the victim with full consciousness of being in a dying condition

The fact that the victim's statement constituted a dying declaration does not preclude it from being admitted as part of the res gestae, if the elements of both are present.

FACTS:

On 04 November 1998, after Lito Santos had served his wife Cecilia and Artemio Pantinople with lunch, Artemio returned to his store which was five (5) meters away from Santos' house. At about 7:30 in the evening, Santos was eating lunch in his house when he heard a gunshot. Artemio had been shot on the chest. He shouted at Santos "Tabangi ko Pre, gipusil ko ni kapitan." (Help me, Pre, I was shot by the captain.) Lito saw a man running away from the direction of Artemio's store, but he wasn't able to see his face. Artemio's wife, Ernita, came running from her house to her husband's side upon seeing him sprawled on the ground and bloodied. She had left her infant lying on the kitchen floor in surprise. Ernita shouted several times, "Kapitan, ngano nimo gipatay ang akong bana." (Captain, why did you shoot my husband?)

Barangay Captain Celestino Marturillas was invited by a couple of police officers to the police station upon informing that he was the principal suspect in the slaying of Artemio Pantinople. He also took with him his government-issued M-14 Rifle and one magazine of live M-14 ammunition, and turned over the same to the Bunawan PNP. To his defense, he claimed that he was asleep in his home which was 250 meters away from Artemio's store. Further, he is said to have just risen from bed when two Barangay Kagawads wanted to see him because of the shooting incident. He even tried to approach Artemio's family, but he could not do so because they had turned belligerent at his presence.

During the trial of the case, Ernita positively identified Marturillas as her husband's assailant. This positive identification is corroborated by Santos' testimony and expert witness Dr. Danilo Ledesma, a medico-legal officer for Davao City, that the gunshot wound in Artemio's body had been caused by a bullet that is of the same size as that fired from an M-14 Rifle. However, the same expert witness testified that Marturillas' hands do not contain gunpowder nitrates.

ISSUE:

Whether or not statement of victim is considered as res gestae? (YES)

RULING:

Generally, witnesses can testify only to those facts derived from their own perception. A recognized exception, though, is a report in open court of a dying person's declaration made under the consciousness of an impending death that is the subject of inquiry in the case. Statements identifying the assailant, if uttered by a victim on the verge of death, are entitled to the highest degree of credence and respect. Persons aware of an impending death have been known to be genuinely truthful in their words and extremely scrupulous in their accusations. The dying declaration is given credence, on the premise that no one who knows of one's impending death will make a careless and false accusation. Hence, not infrequently, pronouncements of guilt have been allowed to rest solely on the dying declaration of the deceased victim. To be admissible, a dying declaration must 1) refer to the cause

and circumstances surrounding the declarant's death; 2) be made under the consciousness of an impending death; 3) be made freely and voluntarily without coercion or suggestions of improper influence; 4) be offered in a criminal case, in which the death of the declarant is the subject of inquiry; and 5) have been made by a declarant competent to testify as a witness, had that person been called upon to testify.

True, he made no express statement showing that he was conscious of his impending death. The law, however, does not require the declarant to state explicitly a perception of the inevitability of death. The perception may be established from surrounding circumstances, such as the nature of the declarant's injury and conduct that would justify a conclusion that there was a consciousness of impending death. Even if the declarant did not make an explicit statement of that realization, the degree and seriousness of the words and the fact that death occurred shortly afterwards may be considered as sufficient evidence that the declaration was made by the victim with full consciousness of being in a dying condition.

The fact that the victim's statement constituted a dying declaration does not preclude it from being admitted as part of the *res gestae*, if the elements of both are present. Section 42 of Rule 130 of the Rules of Court provides: "*Part of the res gestae. S*tatements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae.* So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae.*"

SECURITY BANK AND TRUST COMPANY -*versus*- ERIC GAN
G.R. No. 150464, SECOND DIVISION, June 27, 2006, CORONA, *J.*

There is no question that the entries in the ledgers were made by one whose duty it was to record transactions in the ordinary or regular course of the business. But for the entries to be prima facie evidence of the facts recorded, the Rule interpose[s] a very important condition, one which we think is truly indispensable to the probative worth of the entries as an exception to the hearsay rule, and that is that the entrant must be "in a position to know the facts therein stated." Undeniably, Mr. Mercado was in a position to know the facts of the check deposits and withdrawals. But the transfers of funds through the debit memos in question?

FACTS:

Respondent Gan opened a current account to the petitioner which he can draw check from its fund. Under a special agreement with the petitioner manager Mr. Qui, respondent is allowed to transfer fund from his account to another person's account. His transaction of transferring fund from his account to another account is covered by a debit memo. In December 14, 1982, he was reportedly to have incurred a negative balance in the amount of P153,757.78. By Sept. 15, 1990 his total obligation to the petitioner allegedly amounted to P297,060.01 inclusive of interest. Petitioner filed a complaint to recover the sum of money from the respondent after his refusal to pay contending that the alleged overdraft was made from transactions without his knowledge and consent. Petitioner presented its bookkeeper, Patricio Mercado who handles the respondent's account and transactions in a ledger. Records show that a transfer of fund from the respondent's account was made to another person's account which was made with authority from Qui which resulted to the overdraft of his account. Respondent denied to have authorized such transaction. The lower court dismissed the case on the ground that the petitioner failed to establish with substantial evidence that the respondent

does owe them that sum of money. The CA affirmed the lower court decision upon the court hence this petition.

ISSUE:

Whether or not petitioner has established substantial evidence that respondent is liable for the overdraft on his account.

RULING:

The court held that the ledger presented is not competent evidence to prove that the respondent consented to the transaction made on his account. Petitioner invoked Section 43 of Rule 130: "Entries in the course of business – Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty."

Under this exception to the hearsay rule, the admission in evidence of entries in corporate books required the satisfaction of the following conditions:

1. the person who made the entry must be dead, or unable to testify;

2. the entries were made at or near the time of the transactions to which they refer;

3. the entrant was in a position to know the facts stated in the entries;

4. the entries were made in his professional capacity or in the performance of a duty, whether legal, contractual, moral or religious; and

5. the entries were made in the ordinary or regular course of business or duty. The ledger entries did not meet the first and third requisites.

Mercado had no personal knowledge of the facts constituting the entries, particularly those entries which resulted in the negative balance. He had no knowledge of the truth or falsity of these entries. We agree entirely with the following discussion of the trial court which was affirmed by the CA: The plaintiff submits that the ledger cards constituted the best evidence of the transactions made by the defendant with the bank relative to his account, pursuant to Section 3 of Rule 130 of the Revised Rules on Evidence. There is no question that the entries in the ledgers were made by one whose duty it was to record transactions in the ordinary or regular course of the business. But for the entries to be *prima facie* evidence of the facts recorded, the Rule interpose[s] a very important condition, one which we think is truly indispensable to the probative worth of the entries as an exception to the hearsay rule, and that is that the entrant must be "*in a position to know the facts therein stated.*" Undeniably, Mr. Mercado was in a position to know the facts of the check deposits and withdrawals. But the transfers of funds through the debit memos in question?

MANILA ELECTRIC COMPANY, *petitioner, -versus-* Hon. SECRETARY OF LABOR LEONARDO QUISUMBING and MERALCO EMPLOYEES and WORKERS ASSOCIATION (MEWA), *respondent.* G.R. No. 127598, SPECIAL FIRST DIVISION, February 22, 2000, YNARES-SANTIAGO, *J.*

Section 45 of Rule 130 Rules of Evidence provides:

"Commercial lists and the like.——Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein."

Under the afore-quoted rule, statement of matters contained in a periodical may be admitted only "if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein."

FACTS:

Manila Electric Company (MERALCO) and its union Meralco Employees and Workers Association (MEWA) renegotiated its 1992-1997 CBA insofar as the last two-year period was concerned. The Secretary of Labor assumed jurisdiction and granted the arbitral awards. There was no question that these arbitral awards were to be given retroactive effect.

However, the parties dispute the reckoning period when retroaction shall commence. Meralco claims that the award should retroact only from such time that the Secretary of Labor rendered the award. The union argues should retroact to such time granted by the Secretary who has plenary and discretionary power to determine the effectivity of the arbitral award. The union cited the case of St. Luke's and Mindanao Terminal where the Secretary ordered the retroaction of the CBA to the date of expiration of the previous CBA. While the All Asia Capital report was used to support its position regarding the wage issue.

ISSUE:

Whether or not the All Asia Capital report may be an accurate basis and conclusive determinant of the rate of wage issue.

RULING:

Section 45 of Rule 130 Rules of Evidence provides:

"Commercial lists and the like.——Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein."

Under the afore-quoted rule, statement of matters contained in a periodical may be admitted only "if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein."

As correctly held in our Decision dated January 27, 1999, the cited report is a mere newspaper account and not even a commercial list. At most, it is but an analysis or opinion which carries no persuasive weight for purposes of this case as no sufficient figures to support it were presented. Neither did anybody testify to its accuracy. It cannot be said that businessmen generally rely on news items such as this in their occupation. Besides, no evidence was presented that the publication was

regularly prepared by a person in touch with the market and that it is generally regarded as trustworthy and reliable. Absent extrinsic proof of their accuracy, these reports are not admissible. In the same manner, newspapers containing stock quotations are not admissible in evidence when the source of the reports is available. With more reason, mere analyses or projections of such reports cannot be admitted. In particular, the source of the report in this case can be easily made available considering that the same is necessary for compliance with certain governmental requirements.

TURADIO C. DOMINGO VS. JOSE C. DOMINGO ET AL.
G.R. No. 150897, FIRST DIVISION, April 11, 2005, QUISUMBING, *J.*

The passage of time and a person's increase in age may have decisive influence in his handwriting characteristics. Thus, in order to bring about an accurate comparison and analysis, the standards of comparison must be as close as possible in point of time to the suspected signature

FACTS:

Petitioner Turadio Domingo is the oldest of the five children of the late Bruno B. Domingo, formerly the registered owner of the properties subject of this dispute. Private respondents Leonora Domingo-Castro, Nuncia Domingo-Balabis, Abella Domingo, and Jose Domingo are petitioner's siblings. A family quarrel arose over the validity of the purported sale of the house and lot by their father to private respondents. Sometime in 1981 petitioner, who by then was residing on the disputed property, received a notice, declaring him a squatter. Petitioner learned of the existence of the assailed Deed of Absolute Sale when an ejectment suit was filed against him. Subsequently, he had the then Philippine Constabulary-Integrated National Police (PC-INP, now Philippine National Police or PNP) Crime Laboratory compare the signature of Bruno on the said deed against specimen signatures of his father. As a result, the police issued him Questioned Document Report to the effect that the questioned signature and the standard signatures were written by two different persons Thus; petitioner filed a complaint for forgery, falsification by notary public, and falsification by private individuals against his siblings. But after it conducted an examination of the questioned documents, the National Bureau of Investigation (NBI) came up with the conclusion that the questioned signature and the specimen signatures were written by one and the same person, Bruno B. Domingo. Consequently, petitioner instituted a case for the declaration of the nullity of the Deed of Sale, reconveyance of the disputed property, and cancellation of TCT.

ISSUE:

Whether or not the Court errs when it held that the trial court correctly applied the rules of evidence in disregarding the conflicting PC-INP and NBI questioned document reports.

RULING:

We find no reason to disagree with the Court of Appeals. The passage of time and a person's increase in age may have decisive influence in his handwriting characteristics. Thus, in order to bring about an accurate comparison and analysis, the standards of comparison must be as close as possible in point of time to the suspected signature. As correctly found by the appellate court, the examination conducted by the PC-INP Crime Laboratory did not conform to the foregoing standard. Recall that in the case, the signatures analyzed by the police experts were on documents executed several years apart. A signature affixed in 1958 or in 1962 may involve characteristics different from those borne

by a signature affixed in 1970. Hence, neither the trial court nor the appellate court may be faulted for refusing to place any weight whatsoever on the PC-INP questioned document report.

The questioned Deed of Absolute Sale in the present case is a notarized document. Being a public document, it is *prima facie* evidence of the facts therein expressed. It has the presumption of regularity in its favor and to contradict all these, evidence must be clear, convincing, and more than merely preponderant. Petitioner has failed to show that such contradictory evidence exists in this case.

PEOPLE OF THE PHILIPPINES, plaintiff-appellee, -*versus*- NOEL LEE, accused-appellant.
G.R. No. 139070, EN BANC, May 29, 2002, PUNO, *J.*

The rule is that the character or reputation of a party is regarded as legally irrelevant in determining a controversy, so that evidence relating thereto is not admissible.

FACTS:

Lee was convicted for murder of his neighbor, Joseph Marquez. He assails his conviction arguing that the testimony of victim's mother was not credible and that the Trial Court erred in hastily tagging him as the assailant based merely on the biased declaration of the mother without considering the shady character of the victim against whom others might have an axe to grind.

He claims that the Trial Court erred in failing to consider the proof he presented to show the victim's bad reputation in their neighborhood as a thief and drug addict, particularly the letter of the victim's mother to the Caloocan City Mayor surrendering her son to the Mayor for rehabilitation.

ISSUE:

Whether the Trial Court erred in not considering the victim's character.

RULING:

Character is defined to be the possession by a person of certain qualities of mind and morals, distinguishing him from others. It is the opinion generally entertained of a person derived from the common report of the people who are acquainted with him; his reputation. "Good moral character" includes all the elements essential to make up such a character; among these are common honesty and veracity, especially in all professional intercourse; a character that measures up as good among people of the community in which the person lives, or that is up to the standard of the average citizen; that status which attaches to a man of good behavior and upright conduct.

The rule is that the character or reputation of a party is regarded as legally irrelevant in determining a controversy, so that evidence relating thereto is not admissible. Ordinarily, if the issues in the case were allowed to be influenced by evidence of the character or reputation of the parties, the trial would be apt to have the aspects of a popularity contest rather than a factual inquiry into the merits of the case. After all, the business of the court is to try the case, and not the man; and a very bad man may have a righteous cause. There are exceptions to this rule however and Section 51, Rule 130 gives the exceptions in both criminal and civil cases.

THE PEOPLE OF THE PHILIPPINES, *appellee*, -*versus*- KAKINGCIO CAÑETE, *appellant*.

G.R. No. 142930, EN BANC, March 28, 2003, CALLEJO, SR., *J.*

Parenthetically, under Sections 19 to 21 of the Rule on Examination of a Child Witness which took effect on December 15, 2000, child witnesses may testify in a narrative form and leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice. Objections to questions should be couched in a manner so as not to mislead, confuse, frighten and intimidate the child:

Sec. 19. Mode of questioning.—The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

FACTS:

At about 8:00 p.m., Alma was already asleep. Paquito was sleeping near her feet. The house was dark. Momentarily, Alma was awakened when she felt someone caressing her. When she opened her eyes, she saw her uncle Kakingcio who was wearing a pair of short pants but naked from waist up. He was beside her with his left palm touching her forehead, down to her face, hand and feet. She could smell liquor from his breath. He poked an 8-inch long knife on her neck and whispered to her*: "Ma, don't tell your yaya because I will do something to you."* Kakingcio then removed his short pants, lifted her skirt and pulled down her panties. He threatened to kill her if she made a sound. Alma was terrified. Kakingcio then inserted his private organ into Alma's vagina and made a push and pull movement of his body. Alma felt pain in her private part and could do nothing but cry as Kakingcio ravished her. In the process, Alma lost consciousness. When she regained consciousness, it was already 6:00 in the morning of February 2, 1996. She was weak and could hardly stand up. She noticed blood in her vagina. By then, Kakingcio had already left the house. Alma could do nothing but cry.

Kakingcio arrived back home after lunch time. Alma hid from her uncle.

On February 3, 1996, at 8:00 in the evening, Alma was asleep in the sala of their house. She was awakened when she felt her pants being pulled down. She was aghast when she saw Kakingcio beside her pulling down her pants. She resisted and ran out of the house to escape from Kakingcio. She rushed to the house of a neighbor *Ka Caring*to whom Alma revealed that her uncle raped her and that he was about to rape her again. Caring adviced Alma not to return to their house. Alma slept in the house of Caring. Alma returned to their house the next day, February 4, 1996. By then, Kakingcio was no longer in the house.

On February 5, 1996, Alejandra went up the hill to gather camote tops. She was then armed with a bolo. Alma followed Alejandra to the hills and revealed to her that Kakingcio raped her on February 1, 1996. Alejandra was livid with rage. She rushed back to the house and confronted Kakingcio with the charge of Alma. Alejandra and Kakingcio quarreled. She berated him for having taken advantage of his own flesh and blood. She told him to leave the house. Kakingcio agreed on the condition that he would bring his personal belongings with him. After Kakingcio left, Alejandra accompanied Alma to the barangay captain and complained against Kakingcio. The Barangay Captain wrote a letter to the local police authorities requesting assistance to Alejandra and Alma. On February 9, 1996, Dra. Bibiana A. Cardente, the Municipal Health Officer of Capoocan, Leyte, examined Alma.

Alma was entrusted to the Lingap Center in Pawing Palo, Leyte.

On April 26, 1996, an Information was filed with the Regional Trial Court of Leyte, Branch 36, charging Kakingcio with rape of a minor (12 years old) against her will to her damage and prejudice. When arraigned, Kakingcio, assisted by counsel, pleaded not guilty to the crime charged.

When he testified, Kakingcio denied having sexually assaulted Alma. He interposed the defense of alibi. Kakingcio testified that he was not aware of any reason why his wife and Alma would charge him with rape.

On February 4, 2000, the trial court rendered a decision finding Kakingcio guilty beyond reasonable doubt of rape and imposing on him the penalty of death in view of the presence of the special qualifying circumstance of the minority of private complainant Alma and her relationship to Kakingcio and the special aggravating circumstance of use of a deadly weapon and without any mitigating circumstance in the commission of the crime.

ISSUE:

Whether the Trial Court erred in giving undue weight and credence to the incredible testimony of the private complainant and in disregarding the evidence adduced by the defense.

RULING:

On the assignment of error, the appellant avers that the prosecution had a difficulty proving that the appellant raped the private complainant in light of her testimony that when the appellant mounted her, he still had his short pants on. When the prosecution tried to elicit from the offended party how appellant's penis could have been inserted into her vagina with his pants still on and the appellant's counsel objected to the question, the presiding judge himself took the cudgels for the prosecution and propounded questions on the private complainant. Worse, the presiding judge posed leading questions to the private complainant. The presiding judge was biased and partial to the prosecution.

Parenthetically, under Sections 19 to 21 of the Rule on Examination of a Child Witness which took effect on December 15, 2000, child witnesses may testify in a narrative form and leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice. Objections to questions should be couched in a manner so as not to mislead, confuse, frighten and intimidate the child:

Sec. 19. *Mode of questioning.*—The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.

The court may allow the child witness to testify in a narrative form.

While it may be true that it was dark when the appellant ravished the private complainant in his house, it cannot, however, be gainsaid that the private complainant could have sufficiently identified the appellant as the culprit. The appellant was the uncle of the private complainant. She and her father Paquito had been living with the appellant and his family off and on for years before she and

her father were brought back with appellant in January 1996 to Capoocan, Leyte, to live anew with the appellant and his family. The private complainant was thus familiar not only with the physical build of the appellant but also with his voice and peculiar smell. A person may be identified by these factors. Once a person has gained familiarity with another, identification is quite an easy task.[10] In this case, the appellant poked a knife on her neck and whispered to the private complainant before she raped her: "*Ma, ayaw pagsumat kan imo yaya kay may-ada ako ha imo bubuhaton*" (Ma, don't tell to your yaya because I will do something to you." "Ma" was the nickname of Alma, the private complainant. "Yaya" was Alejandra Cañete, the common-law wife of the appellant.[11] Moreover, as testified to by the private complainant, the only persons left in the house in the evening of February 1, 1997 were the appellant and his two young children, Paquito, who was blind and an invalid.

MILAGROS MANONGSONG, joined by her husband, CARLITO MANONGSONG, *Petitioners, -versus*-FELOMENA JUMAQUIO ESTIMO, EMILIANA JUMAQUIO, NARCISO ORTIZ, CELESTINO ORTIZ, RODOLFO ORTIZ, ERLINDA O. OCAMPO, PASTOR ORTIZ, JR., ROMEO ORTIZ BENJAMIN DELA CRUZ, SR., BENJAMIN DELA CRUZ, JR., AURORA NICOLAS, GLORIA RACADIO, ROBERTO DELA CRUZ, JOSELITO DELA CRUZ and LEONCIA S. LOPEZ, *Respondents.*
G.R. No. 136773, FIRST DIVISION, June 25, 2003, CARPIO, *J.*

Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts.

FACTS:

Spouses Agatona Guevarra and Ciraoco Lopez had 6 children including petitioner Manongsong (and his wife) and the respondents. Petitioners filed a Complaint alleging that Manongsong and respondents are the owners pro indiviso of a parcel of land in Las Pinas. Invoking Art. 494 of the Civil Code, petitioners prayed for the partition and award to them of 1/5 of the land. They alleged that Agatona was the original owner and upon her death, her children inherited the land. Respondents have been in possession of the land for as long as they can remember and petitioners were the only descendants not occupying any portion of the property. Most respondents entered into a compromise agreement with petitioners. Under the Agreement, trhey agreed that each group of heirs would receive an equal share in the property. The remaining respondents did not sign the Agreement and one group (Jumaquio sisters) actively opposed petitioners claim. They alleged that Navarro (the mother of Agatona) sold the property to their mother (Enriquita Lopez-Jumaquio). The Jumaquio sisters presented provincial Tax Declaration No. 911 for the year 1949 in the sole name of Navarro. In addition, the Tax Declarations stated that the houses of Agatona and Enriquita stood on the property as improvements. The sisters also presented a notarized Kasulatan (Deed of Sale) dated October 11, 1957 in favor of Enriquita and signed by Navarro. The Clerk of Court of RTC Manila certified that the Kasulatan was notarized by the notary public for the City of Manila Atty. Andrada on October 11, 1957 and entered in his Notarial Register. Because they were in peaceful possession of their portion of the property for more than 30 years, they also invoked the defense of acquisitive prescription against petitioners and charged the petitioners of laches.

RTC ruled in favor of petitioners. It held that the Kasulata was void, even absent evidence attacking its validity. Thus even if there was no countervailing proof adduced to impugn the documents validity, it was null and void because the property was conjugal property and no evidence was produced to prove that it was solely a paraphernal property. Respondents appealed. CA reversed the RTC. Petitioners in their appellees brief presented for the first time a supposed photocopy of Agatonas death certificate showing that her mother was a certain Juliana Gallardo. They also attached

an affidavit from Benjamin de la Cruz, Sr. stating that he only knew Navarro by name and never met her personally. On the basis of these documents, petitioners assailed the genuineness and authenticity of the Kasulatan.

The CA refused to take cognizance of the death certificate and affidavit on the ground that they never formally offered the documents in evidence. The CA also held that they were bound by their admission that Navarro was the original of the Property. The CA further held that the RTC erred in assuming that the property was conjugal in nature when Navarro sold it. It is a settled rule that the party who invokes the presumption that all property of marriage belongs to the conjugal partnership, must first prove that the property was acquired during the marriage.Proof of acquisition during the coveture is a *condition sine qua non* for the operation of the presumption in favor of conjugal ownership.

In this case, not a single iota of evidence was submitted to prove that the subject property was acquired by Justina Navarro during her marriage

ISSUE:

Whether petitioners were able to prove, by the requisite quantum of evidence, that Manongsong is a co-owner of the Property and therefore entitled to demand for its partition.

RULING:

We review the factual and legal issues of this case in light of the general rules of evidence and the burden of proof in civil cases, as explained by this Court in *Jison v. Court of Appeals:* Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff 's *prima facie*case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.

PHILIPPINE TRUST COMPANY (also known as PHILTRUST BANK*), Petitioner -versus-*
REDENTOR R. GABINETE, SHANGRILA REALTY CORPORATION and ELISA T. TAN, *Respondents*
G.R. No. 216120, SECOND DIVISION, March 29, 2017, PERALTA, *J.*

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. In this case, the respondent was not able to prove the fact that his signature was forged.

FACTS:

Petitioner Philtrust, a domestic commercial banking corporation duly organized and existing under Philippine laws, filed a complaint on March 8, 2006 against Shangrila Realty Corporation, a domestic corporation duly organized under Philippine laws, together with Elisa Tan and respondent Redentor Gabinete alleging that petitioner granted Shangrila's application for a renewal of its bills discounting line in the amount of Twenty Million Pesos (₱20,000,000.00) as shown by a letter-advice dated May 28, 1997 bearing the conformity of Shangrila's duly-authorized representatives, Tan and respondent Gabinete. The said loan was conditioned on the execution of a Continuing Suretyship Agreement dated August 20, 1997, with Shangrila as borrower and respondent Gabinete and Tan as sureties, primarily to guaranty, jointly and severally, the payment of the loan.

It is provided in the Continuing Suretyship Agreement that the sureties shall jointly and severally guarantee with the borrower the punctual payment at maturity of any and all instruments, loans, advances, credits and/or other obligations, and any and all indebtedness of every kind, due, or owing to Philtrust, and such interest as may accrue and such expenses as may be incurred by Philtrust.

Upon the maturity of the loan, Shangrila failed to pay Philtrust, rendering the entire principal loan, together with accrued interest and other charges, due and demandable. Philtrust repeatedly demanded for payment, but none of the respondents heeded the said demands.

Thus, Philtrust filed a Petition for Extra judicial Foreclosure of the real estate mortgage wherein Philtrust was the highest bidder at the public auction with a bid of Six Million Pesos (₱6,000,000.00).

Due to the insufficiency of the proceeds of the foreclosure sale to fully satisfy the obligation of Shangrila. Philtrust filed the instant case.

On May 29, 2007, Philtrust filed a Motion to Declare Shangrila, Tan and respondent Gabinete in default. The RTC, dismissed the complaint without prejudice due to the failure of Philtrust to present its evidence ex parte. Philtrust filed a motion for reconsideration which was granted. In the meantime, respondent Gabinete, filed a Motion to Lift Order of Default which was granted.

After the cross-examination and re-direct examination of Philtrust's witness and after respondent Gabinete testified, the latter, filed a motion praying that the court direct the National Bureau of Investigation *(NBI)* to conduct an analysis of respondent Gabinete's signature appearing in the Continuing Suretyship Agreement which the RTC granted.

A senior document examiner of the NBI, Efren Flores, testified that he evaluated and made a comparative examination of the submitted specimen and the document containing the questioned signature to determine whether they were written by one and the same person and after a thorough examination, it was found that the questioned signatures and the standard sample signatures were not written by one and the same person.

RTC rendered its Decision if favor of the petitioner. The CA reversed the decision. According to the CA, the RTC erred in not giving due weight to the findings of the NBI Document Examiner based on its finding that the sample standard signatures submitted by respondent Gabinete to the NBI comprised only of his full signature and not his shortened signature. Hence, the CA concluded that there was no dearth of evidence to make an intelligent comparison of respondent Gabinete's shortened signature.

ISSUE:

Whether the CA erred in giving credence to the finding of the NBI Document Examiner.

RULING:

The CA cites the failure of the RTC to give due weight to the findings of the NBI Document Examiner and the failure of the judge to conduct his own independent examination of the questioned signatures in arriving at an erroneous conclusion. However, it is the CA that gravely committed an inaccurate appreciation of the facts and evidence presented in court.

In *Mendoza v. Fermin*, 729 SCRA 219 (2014), this Court emphasized that a finding of forgery does not depend entirely on the testimony of handwriting experts and that the judge still exercises independent judgment on the issue of authenticity of the signatures under scrutiny.

While we recognize that the technical nature of the procedure in examining forged documents calls for handwriting experts, resort to these expe1is is not mandatory or indispensable, because a finding of forgery does not depend entirely on their testimonies. Judges must also exercise independent judgment in determining the authenticity or genuineness of the signatures in question, and not rely merely on the testimonies of handwriting expert is.

As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. In this case, the respondent was not able to prove the fact that his signature was forged.

SUSAN A. YAP, Petitioner -*versus*- ELIZABETH LAGTAPON, Respondent
G.R. No. 196347, FIRST DIVISION, January 23, 2017, CAGUIOA, *J.*

To successfully overcome such presumption of regularity, case law demands that the evidence against it must be clear and convincing; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit. In this case, the burden of proof to discharge such presumption lay with petitioner Yap.

FACTS:

On October 9, 1997, respondent Lagtapon instituted a civil suit against petitioner Yap for a sum of money.

Summons were issued and as per return of service of summons dated November 4, 1997, prepared by the process server in the person of Ray Precioso, the petitioner refused to acknowledge receipt thereof.

As no answer was filed, respondent filed motion to declare petitioner as default. Motion was granted, therefore, giving the respondent the right to present her evidence ex-parte.
On February 12, 1998, court rendered judgment in favor of the respondent.

On September 25, 2000, the Ex-Officio Provincial Sheriff for Negros Occidental issued a Notice of Sale on execution. Setting the auction of the petitioner's property. Joey Dela Paz, who mortgaged the

property, found out that the annotated title of the said property is in a Notice of Embargo. Upon having knowledge to this, petitioner resorted to the court for the truth and she found out that she was sued by the respondent.

ISSUE:

Whether or not the CA committed reversible error in dismissing the Petition for Annulment and ruling that RTC had validly acquired jurisdiction over petitioner Yap's person through service of summons.

RULING:

No. It is axiomatic that a public official enjoys the presumption of regularity in the discharge of one's official duties and functions. Here, in the absence of clear *indicia* of partiality or malice, the service of Summons on petitioner Yap is perforce deemed regular and valid. Correspondingly, the Return of Service of Precioso as process server of the RTC constitutes *prima facie* evidence of the facts set out therein. The Return of Service states: Respectfully returned to the Officer-in-Charge of this Court the herein-attached Summons dated October 15, 1997, DULY SERVED with the following information, to wit: That on November 4, 1997 at about 4:35 p.m., **the undersigned served a copy of the complaint, its annexes as well as the Summons to the defendant Susan A. Yap, personally**, but she refused to sign said Summons despite the undersigned's explanation to her but nevertheless, the undersigned tendered and leave (*sic*) a copy for her. For the information of this Honorable Court. Bacolod City, November 4, 1997. Hence, as far as the circumstances attendant to the service of Summons are concerned, the Court has the right to rely on the factual representation of Precioso that service had indeed been made on petitioner Yap in person. A contrary rule would reduce the Court to a mere fact-finding tribunal at the expense of efficiency in the administration of justice, which, as mentioned earlier, is beyond the ambit of the Court's jurisdiction in a Rule 45 petition. To successfully overcome such presumption of regularity, case law demands that the evidence against it must be *clear and convincing*; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit. In this case, the burden of proof to discharge such presumption lay with petitioner Yap.

Wherefore, the foregoing premises considered, the Court resolves to deny the instant petition.

DATALIFT MOVERS, INC. and/or JAIME B. AQUINO, Petitioners, -*versus*- BELGRAVIA REALTY & DEVELOPMENT CORPORATION and SAMPAGUITA BROKERAGE, INC. Respondents.
G.R. No. 144268, SECOND DIVISION, August 30, 2006, GARCIA, *J.*

The Rules of Court already sufficiently shields respondent Belgravia, as lessor, from being questioned by the petitioners as lessees, regarding its title or better right of possession as lessor because having admitted the existence of a lessor-lessee relationship, the petitioners are barred from assailing Belgravia'stitle of better right of possession as their lessor.

FACTS:

PNR owned a lot which it leased out to Sampaguita Borkerage, Inc. Sampaguita thereafter entered into a special arrangement with its sister company, Belgravia Realty & Development Corp. whereby Belgravia would put up on the lot a warehouse for its own use. Belgarvia did put up a warehouse. However, instead of using the said warehouse for its own use, Belgravia sublet it to petitioner Datalift

Movers for a period of 1 year. By the terms of lease, Datalift shall pay Belgraviaa monthly rental ofP40,000.00payable on or before the 15thday of each month, provided an advance rental for two (2) months is paid upon execution of the contract. After the expiration of the contract, Datalift continued to occupy the property, evidently by acquiesance of lessor Belgraviaor by verbal understanding of the parties.

Subsequently, Belgravia unilaterally increased the monthly rental toP60,000.00. Monthly rental was again increased fromP60,000.00 toP130,000.00. Because of the rental increase made by Belgravia, Datalift stopped paying its monthly rental for the warehouse.

Thereafter, Sampaguita addressed demand letters to Datalift asking the latter to pay its rental in arrears in the amount ofP4,120,000.00and to vacate and surrender the warehouse in dispute. Since Datalift failed to pay, Belgravia and/or Sampaguita filed a complaint for ejectment with MeTC against Datalift and/or its controlling stockholder, Jaime Aquino.

MeTC ruled in favor of Belgravia. It also rejected the defendants challenge against Belgravia's title over the PNR lot occupied by the subject warehouse. In their appeal, Datalift and Aquino questioned the MeTC's finding that there was an implied new lease between PNR and Sampaquita on the lot on which the warehouse in question stands, and accordingly fault the same court for ordering them to vacate the same warehouse and to pay rentals as well as attorney's fees and litigation expenses. RTC and CA affirmed MeTCs ruling.

ISSUE:

Whether Datalift can question Belgravias ownership over the property.

RULING:

No. The Rules of Court already sufficiently shields respondent Belgravia, as lessor, from being questioned by the petitioners as lessees, regarding its title or better right of possession as lessor because having admitted the existence of a lessor-lessee relationship, the petitioners are barred from assailing Belgravia's title of better right of possession as their lessor. Section 2, Rule 131, of the Rules of Court provides:

Conclusive presumptions. – The following are instances of conclusive presumptions:

xxx (b)The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

Conclusive presumptions have been defined as inferences which the law makes so peremptory that it will not allow them to be overturned by any contrary proof however strong. As long as the lessor-lessee relationship between the petitioners and Belgravia exists as in this case, the former, as lessees, cannot by any proof, however strong, overturn the conclusive presumption that Belgravia has valid title to or better right of possession to the subject leased premises than they have.

The Court found that it was superfluous on the part of the MeTC to rule on the source or validity of Belgravia's title or right of possession over the leased premises as against the petitioners as lessees in this case. If at all, Belgravia's title or right of possession should only be taken cognizance of in a

proper case between PNR and Belgravia, but not in the present case (which is between Belgravia and Datalift).

CONCEPCION CHUA GAW, *petitioner*, *-versus-* SUY BEN CHUA and FELISA CHUA, *respondents.*
G.R. No. 160855, THIRD DIVISION, April 16, 2008, NACHURA, *J.*

That the witness is the adverse party does not necessarily mean that the calling party will not be bound by the formers testimony. The fact remains that it was at his instance that his adversary was put on the witness stand. Unlike an ordinary witness, the calling party may impeach an adverse witness in all respects as if he had been called by the adverse party, except by evidence of his bad character. Under the rule permitting the impeachment of an adverse witness, although the calling party does not vouch for the witness veracity, he is nonetheless bound by his testimony if it is not contradicted or remains unrebutted.

FACTS:

Spouses Chua Chin and Chan Chi were the founders of three business enterprises namely: Hagonoy Lumber, Capitol Sawmill Corporation, and Columbia Wood Industries. The couple had 7 children: Santos chua, Suy Ben Chua, Chua Suy Phen; Chua Sioc Huan; Chua Suy Lu; and Julita Chua. When Chua Chin died, he left his wife Chan Chi and his 7 children as his only surviving heirs. At the time of his death, the net worth of Hagonoy Lumber was 415,487.20.

On December 8, 1986, his surviving heirs executed a Deed of Extra-Judicial Partition and Renunciation of Hereditary rights in Favor of a Co-Heir (Deed of Partition), wherein the heirs settled their interest in Hagonoy Lumber. In the said document, Chan Chi and the six children likewise agreed to voluntarily renounce and waive their shares over Hagonoy Lumber in favor of their co-heir Chua Sioc Huan.

In May 1988, petitioner Concepcion Chua Gaw and her husband, Antonio Gaw (Spouses Gaw), asked respondent Suy Ben Chua, to lend them P 200,000 to be used for the construction of their house in Marilao, Bulacan. The parties agreed that the loan will be payable within six (6) months without interest. Suy Ben issued a check in the amount of P200,000.00 to the couple. The spouses defaulted for which, Suy Ben filed a Complaint for a Sum of Money before the RTC.

During trial, the spouses Gaw called Suy Ben to testify as adverse witness under Rule 132 Section 10. On direct examination, Suy Ben testified that Hagonoy Lumber was the conjugal property of his parents Chua Chin and Chan Chi, who were both Chinese citizens. He said that, initially, his father leased the lots where Hagonoy Lumber is presently located from his godfather, Lu Pieng, and that his father constructed the two-storey concrete building standing thereon. According to Suy Bien, when he was in highschool, it was his father who managed the business but he and his other siblings were helping him. Later, his sister, Sioc Huan, managed Hagonoy Lumber together with their other brothers and sisters. He stated that he also managed Hagonoy when he was in high school, but he stopped when he got married and found another job. He said that he now owns the lots where Hagonoy Lumber is operating.

On cross-examination, Concepcion explained that he ceased to be a stockholder of Capitol Sawmill when he sold shares of stock to other Stockholders on Jan 1, 1991. He further testified that Sioc Huan acquired Hagonoy Lumber by virtue of a Deed of Partition, executed by the heirs of Chua Chin. He in turn became the owner of Hagonoy Lumber when he bought the same from Sioc Huan through a Deed

of Sale dated August 1, 1990. On re-direct examination, Concepcion stated that he sold shares of stock in Capitol Sawmill for P254,000.00, which payment he received in cash. He also paid the purchase price of 225,000.00 for Hagonoy Lumber in cash, which payment was not covered by a separate receipt as he merely delivered the same to Sioc Huan at her house in Paso de Blas Valenzuela. Although he maintains several accounts at Planters Bank, Paluwagan ng Bayan, and China Bank, the amount he paid to Sioc Huan was not taken from any of them. He kept the amount in the house because he was engaged in rediscounting checks of people from the public market.

Prior to the RTC Decision, Antonio Gaw died die to cardio vascular and respiratory failure. RTC then ruled in favor of Suy Ben stating that the latter is entitled to the payment of 200,000 pesos with interest.

Concepcion appealed to the CA. The CA affirmed. An MR was filed but was denied as well. Concepcion contends in the present petition for review on certiorari that her case was unduly prejudiced by the RTCs treatment of the Suy Bens testimony as adverse witness during cross-examination by his own counsel as part of her evidence. Concepcion argues that the adverse witness testimony elicted during cross-examination should not be considered as evidence of the calling party.

ISSUE:

Whether or not the adverse witness testimony elicited during cross-examination should be considered as evidence of the calling party.

RULING:

No. A party who calls his adversary as a witness is, therefore, not bound by the latter's testimony only in the sense that he may contradict him by introducing other evidence to prove a state of facts contrary to what the witness testifies on.

A rule that provides that the party calling an adverse witness shall not be bound by his testimony does not mean that such testimony may not be given its proper weight, but merely that the calling party shall not be precluded from rebutting his testimony or from impeaching him. This, petitioner Concepcion failed to do.

In the present case, the petitioner, by her own testimony, failed to discredit the respondent's testimony on how Hagonoy Lumber became his sole property. The petitioner admitted having signed the Deed of Partition but she insisted that the transfer of the property to Chua Siok Huan was only temporary. On cross-examination, she confessed that no other document was executed to indicate that the transfer of the business to Chua Siok Huan was a temporary arrangement. She declared that, after their mother died in 1993, she did not initiate any action concerning Hagonoy Lumber, and it was only in her counterclaim in the instant that, for the first time, she raised a claim over the business. Due process requires that in reaching a decision, a tribunal must consider the entire evidence presented. All the parties to the case, therefore, are considered bound by the favorable or unfavorable effects resulting from the evidence.

As already mentioned, in arriving at a decision, the entirety of the evidence presented will be considered, regardless of the party who offered them in evidence. In this light, the more vital consideration is not whether a piece of evidence was properly attributed to one party, but whether it was accorded the opposite probative weight by the court. The testimony of an adverse witness is

evidence in the case and should be given its proper weight, and such evidence becomes weightier if the other party fails to impeach the witness or contradict his testimony.

ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION, *petitioner*, *-versus* COMMISSIONER OF INTERNAL REVENUE, *respondent.*
G.R. No. 159490, SECOND DIVISION, February 18, 2008, VELASCO, JR., *J.*

Section 34 of Rule 132, Revised Rules on Evidence, is clear that no evidence which has not been formally offered shall be considered.

FACTS:

ATLAS filed a VAT return for the first quarter of 1993 and subsequently, applied with the BIR for the issuance of a tax credit certificate or refund for such VAT paid. The Court of Tax Appeals denied the application for tax credit or refund for insufficiency of evidence as ATLAS did not comply with the submission of the necessary documents as mandated by RR 3-88.

The Court of Appeals subsequently denied the same. ATLAS failure to submit necessary documents in accordance to RR 3-88 is fatal to the application for tax credit or refund, for, without these documents, Atlas VAT export sales indicated in its amended VAT return and the creditable or refundable input VAT could not be ascertained.

ISSUE:

Whether or not ATLAS has sufficiently proven entitlement to a tax credit or refund.

RULING:

No. Section 34 of Rule 132, Revised Rules on Evidence, is clear that no evidence which has not been formally offered shall be considered.

ATLAS has failed to meet the burden of proof required in order to establish the factual basis of its claim for a tax credit or refund. Where the receipts and the export documents purportedly showing the VAT paid by Atlas were not submitted, the court could not determine the authenticity of the input VAT Atlas has paid. The most competent evidence must be adduced and presented to prove the allegations in a complaint, petition, or protest before a judicial court. And where the best evidence cannot be submitted, secondary evidence may be presented. In this case, the pertinent documents which are the best pieces of evidence were not presented. In addition, the summary presented by Atlas does not replace the pertinent documents as competent evidence to prove the fact of refundable or creditable input VAT. These documents are the best and competent pieces of evidence required to substantiate Atlas claim for tax credit or refund. As tax refunds are in the nature of tax exemptions and construed strictly against the taxpayer, it is improper to allow ATLAS to simply prevail and compel a tax credit or refund in the amount it claims without proving the amount of its claim.

REPUBLIC OF THE *PHILIPPINES, represented by the REGIONAL EXECUTIVE DIRECTOR, DENR, REGION VI, ILOILO CITY, Petitioners, -versus-* VALENTINA REGISTER OF PROVINCE OCCIDENTAL, CALISTON, DIOSCORO ESCARDA, ESPINOSA, DEEDS OF THE OF NEG ROS LEONILA and & SPOUSES ESTRELLA, *Respondents*
G.R. No. 186603, THIRD DIVISION, April 5, 2017, JARDELEZA, *J.*

FACTS:

On October 26, 1955, Cadastral Decree No. N-31626 was issued to Valentina Espinosa (Espinosa). It covered a 28,880-square meter lot located at Lot No. 3599 in Poblacion, Sipalay City, Negros Occidental (property). By virtue of the decree, Original Certificate of Title (OCT) No. 191-N was issued in the name ofEspinosa. On June 17, 1976, Espinosa sold the property to Leonila B. Caliston (Caliston), who was later issued Transfer Certificate of Title (TCT) No. T- 91117.

On January 13, 2003, the State, represented by the Regional Executive Director of the Department of Environment and Natural Resources (DENR), Region VI, Iloilo City, through the Office of the Solicitor General (OSG), filed a Complaint[9] for annulment of title and/or reversion of land with the RTC, Branch 61 of Kabankalan City, Negros Occidental. The State claimed that the property is inalienable public land because it fell within a timberland area indicated under Project No. 27-C, Block C per Land Classification (LC) Map No. 2978, as certified by the Director of Forestry on January 17, 1986.[10]

The spouses Dioscoro and Estrella Escarda (spouses Escarda) intervened, alleging that they have been occupying the property since 1976 on the belief that it belongs to the State. They prayed that Caliston be ordered to cease and desist from ejecting them.

In answer, Caliston countered that the property is not timberland. Invoking laches and prescription, she argued that her title was issued earlier in 1962, while the map shows that the property was classified only in 1986.[14] Caliston also claimed that the spouses Escarda lacked the capacity or personality to intervene because only the State may initiate an action for reversion. She also alleged that the spouses Escarda cannot claim a better right as against her because she merely tolerated their occupancy of the property until their refusal to vacate it.

RTC ruled in favor of the State and ordered the revision of the property to the mass of the public domain and nullifying OCT No. 191-N and TCT No. 91117. CA modified the RTC Decision. It upheld the It upheld the validity of OCT No. 191-N and TCT No. 91117 issued in the names of Espinosa and Caliston.

The CA found that the State failed to prove fraud or misrepresentation on the part of Espinosa when she was issued OCT No. 191-N. It further ruled that the State failed to prove that the property is forest land. The lone piece of evidence consisting of LC Map No. 2978, certified by the Director of Forestry on January 17, 1986, was not authenticated pursuant to Section 24, [25] Rule 132 of the Rules of Court. It noted that the parties stipulated only as to the existence of the map, but not as to its genuineness or the truthfulness of its content. Assuming that the map is admitted in evidence, Espinosa's rights over the property, which accrued in 1962; should not be prejudiced by a subsequent classification by the State done in 1986, or after 24 years.

ISSUE:

Whether or not the State has sufficiently proved that the property is part of inalienable forest land at the time Espinosa was granted the cadastral decree and issued a title.

RULING:

No. The rules require that documentary evidence must be formally offered in evidence after the presentation of testimonial evidence, and it may be done orally, or if allowed by the court, in writing. Due process requires a formal offer of evidence for the benefit of the adverse party, the trial court, and the appellate courts. This gives the adverse party the opportunity to examine and oppose the admissibility of the evidence. When evidence has not been formally offered, it should not be considered by the court in arriving at its decision. Not having been offered formally, it was error for the trial court to have considered the survey map. Consequently, it also erred in ordering the reversion of the property to the mass of the public domain on the basis of the same.

These principles laid down in *SAAD Agro-Industries, Inc. v. Republic*, 503 SCRA 522 (2006), undoubtedly apply here. As part of fair play and due process, the State is as bound by the rules on formal offer of evidence as much as every private party is. More, the State's subsequent reclassification of the area where the property is situated cannot be used to defeat the rights of a private citizen who acquired the land in a valid and regular proceeding conducted 24 years earlier.

JOSEFINA CRUZ-AREVALO, *complainant*, *-versus*-JUDGE LYDIA QUERUBIN-LAYOSA, Regional Trial Court, Branch 217, Quezon City, *respondent.*
A.M.RTJ-06-2005, FIRST DIVISION, July 14, 2006, YNARES-SANTIAGO, *J.*

FACTS:

Josefina Cruz-Arevalo filed an administrative complaint against Judge Querubin-Layosa (judge) for manifest bias and partiality and ignorance of the law relative to a civil case entitled *Cruz-Arevalo and Conrado Cruz v. Home Development Mutual Fund*.

Conrado Cruz executed an authorization letter and SPA in her favor to represent him in the said civil case while Conrado undergoes a medical treatment in the USA. Notwithstanding the presentation of said letter and SPA, the judge declared Cruz non-suited due to his absence during pre-trial. The judge also excluded several paragraphs in the Affidavit which was adopted as the direct testimony of her witness without giving her counsel a chance to comment on the objections raised by Cruz-Arevalo. Moreover, she refused to issue a written order excluding certain paragraphs thus depriving Cruz-Arevalo the opportunity to file certiorari proceedings. Cruz-Arevalo prays for the re-raffling of the case to ensure impartiality. The judge inhibited herself from trying the case. The judge explained that the letter presented by Cruz-Arevalo is defective because it was not notarized and authenticated. The SPA is also defective because it gave Cruz-Arevalo the authority to receive Cruz's contribution to the PAG-IBIG fund and not to represent him in the case. As regards the exclusion of several paragraphs in the Affidavit constituting as the direct testimony of Atty. Cecilio Y. Arevalo, Jr., the judge points out that she gave the other party the chance to go over the affidavit and make objections thereto like any direct testimonial evidence. She claims that no written order is necessary as demanded by complainants counsel because her rulings were made in open court during the course of trial and are already reflected in the transcript of the stenographic notes. Office of the Court Administrator found the accusations unmeritorious and recommended the dismissal of the administrative case for lack of merit.

ISSUE:

Whether or not Judge Querubin-Layosa should be administratively liable.

RULING:

No. While non-appearance of a party may be excused if a duly authorized representative shall appear in his behalf, however Cruz failed to validly constitute complainant because his authorization letter and SPA were not respectively authenticated and specific as to its purpose. Without any authorized representative, the failure of Cruz to appear at the pre-trial made him non-suited. Respondent judge thus correctly dismissed the complaint in so far as he is concerned. As regards the exclusion of certain paragraphs in the affidavit of complainants witness, the rule is that evidence formally offered by a party may be admitted or excluded by the court. If a party's offered documentary or object evidence is excluded, he may move or request that it be attached to form part of the record of the case. If the excluded evidence is oral, he may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony. These procedures are known as offer of proof or tender of excluded evidence and are made for purposes of appeal. If an adverse judgment is eventually rendered against the offeror, he may in his appeal assign as error the rejection of the excluded evidence. The appellate court will better understand and appreciate the assignment of error if the evidence involved is included in the record of the case.

On the other hand, the ruling on an objection must be given immediately after an objection is made, as what respondent judge did, unless the court desires to take a reasonable time to inform itself on the question presented; but the ruling shall always be made during the trial and at such time as will give the party against whom it is made an opportunity to meet the situations presented by the ruling.

Respondent judge correctly ordered the striking out of portions in Atty. Arevalo's affidavit which are incompetent, irrelevant, or otherwise improper. Objections based on irrelevancy and immateriality need no specification or explanation. Relevancy or materiality of evidence is a matter of logic, since it is determined simply by ascertaining its logical connection to a fact in issue in the case. Finally, complainant failed to present evidence to show the alleged bias of respondent judge; mere suspicion that a judge was partial is not enough.

ADELA G. RAYMUNDO, EDGARDO R. RAYMUNDO, LOURDES R. RAYMUNDO, TERESITA N. RAYMUNDO, EVELYN R. SANTOS, ZENAIDA N. RAYMUNDO, LUIS N. RAYMUNDO, JR. and LUCITA R. DELOS REYES, *petitioners, -versus-* ERNESTO LUNARIA, ROSALINDA RAMOS and HELEN MENDOZA, *respondents.*
G.R. No. 171036, SECOND DIVISION, October 17, 2008, QUISUMBING, *J.*

By preponderance of evidence is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence". It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Both the appellate court and trial court ruled that the evidence presented by the petitioners is not sufficient to support their allegation that a subsequent verbal agreement was entered into by the parties.

FACTS:

There are two agreements to remember in this case: (1) the written Exclusive Authority to Sell in favor of Lunaria et al.; and (2) a Subsequent Verbal Agreement. Petitioners approached respondent Lunaria to help them find a buyer for their property. Respondent Lunaria was promised a 5% agent's commission in the event that he finds a buyer. Eventually, respondents found a buyer and a Deed of

Absolute Sale was executed. Later on, Ceferino G. Raymundo, one of the co-owners, advised respondents to go to the bank to receive partial payment of their total commission.

On the version of respondent-creditors, pursuant to the written Exclusive Authority to Sell, respondents (Lunaria et al.) went to the bank to claim their full commission. However, they were told that the check covering the balance of their commission was already given by the bank manager to Lourdes R. Raymundo, the representative of the petitioners. Respondents tried to get the check from the petitioners, however, they were told that there is nothing more due them by way of commission as they have already divided and distributed the balance of the commissions among their nephews and nieces.

While on the version of petitioner-debtors, for their part, petitioners counter that there was a subsequent verbal agreement entered into by the parties after the execution of the written agreement, and hence there is no more balance due to respondent Lunaria. Said verbal agreement provides that the 5% agent's commission shall be divided as follows: 2/5 for the agents, 2/5 for Lourdes Raymundo, and 1/5 for the buyer, Hipolito. The share given to Lourdes Raymundo shall be in consideration for the help she would extend in the processing of documents of sale of the property, the payment of the capital gains tax to the Bureau of Internal Revenue and in securing an order from the court. The 1/5 commission given to Hipolito, on the other hand, will be used by him for the payment of realty taxes.

Now, for failure of the respondents to receive the balance of their agent's commission, they filed an action for the collection of a sum of money.

ISSUE:

Whether or not the lower court erred in requiring the petitioners to establish the verbal agreement modifying the earlier written agreement (the exclusive authority to sell) by more than a preponderance of evidence.

RULING:

No. Petitioners contend that the appellate court erred in requiring them to prove the existence of the subsequent verbal agreement by more than a mere preponderance of evidence since no rule of evidence requires them to do so. In support of this allegation, petitioners presented petitioner Lourdes Raymundo who testified that she was given 2/5 share of the commission pursuant to the verbal sharing scheme because she took care of the payment of the capital gains tax, the preparation of the documents of sale and of securing an authority from the court to sell the property. For their part, respondents counter that the appellate court did not require petitioners to prove the existence of the subsequent oral agreement by more than a mere preponderance of evidence. What the appellate court said is that the petitioners failed to prove and establish the alleged subsequent verbal agreement even by mere preponderance of evidence. Petitioners' above cited allegation has no merit. By preponderance of evidence is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence". It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Both the appellate court and trial court ruled that the evidence presented by the petitioners is not sufficient to support their allegation that a subsequent verbal agreement was entered into by the parties.

In fact, both courts correctly observed that if Lourdes Raymundo was in reality offered the 2/5 share of the agent's commission for the purpose of assisting respondent Lunaria in the documentation requirement, then why did the petitioners not present any written court order on her authority, tax receipt or sales document to support her self-serving testimony? Moreover, even the worksheet allegedly reflecting the commission sharing was unilaterally prepared by petitioner Lourdes Raymundo without any showing that respondents participated in the preparation thereof or gave their assent thereto. Even the alleged payment of 1/5 of the commission to the buyer to be used in the payment of the realty taxes cannot be given credence since the payment of realty taxes is the obligation of the owners, and not the buyer. Lastly, if the said sharing agreement was entered into pursuant to the wishes of the buyer, then he should have been presented as witness to corroborate the claim of the petitioners. However, he was not.

ARTURO G. RIMORIN, SR., petitioner, *-versus-* PEOPLE OF THE PHILIPPINES, respondent. G.R. No. 146481, THIRD DIVISION, April 30, 2003, PANGANIBAN, *J.*

Corpus delicti in its legal sense refers to the fact of the commission of the crime, not to the physical body of the deceased or to the ashes of a burned building or -- as in the present case -- to the smuggled cigarettes. The corpus delicti may be proven by the credible testimony of a sole witness, not necessarily by physical evidence such as those aforementioned.

FACTS:

Col. Panfilo Lacson received information that certain syndicated groups were engaged in smuggling activities somewhere in Port Area, Manila. He fielded three surveillance stake-out teams the following night along Roxas Boulevard and Bonifacio Drive near Del Pan Bridge, whereby they were to watch out for a cargo truck bound for Malabon. Nothing came out of it. On the basis of his investigation, it was discovered that the truck was registered in the name of Teresita Estacio of Pasay City. Col. Lacson and his men returned to the same area, with Col. Lacson posting himself at the immediate vicinity of the 2nd COSAC Detachment in Port Area, Manila, because as per information given to him, the said cargo truck will come out from the premises of the 2nd COSAC Detachment in said place. No truck came. The next morning, a green cargo truck came out from the 2nd COSAC Detachment followed and escorted closely by a light brown Toyota Corona car with 4 men on board. At that time, Lt. Col. Panfilo Lacson had no information whatsoever about the car, so he gave an order by radio to his men to intercept only the cargo truck. The cargo truck was intercepted. Col. Lacson noticed that the Toyota car following the cargo truck suddenly made a sharp U-turn towards the North, unlike the cargo truck which was going south. Almost by impulse, Col. Lacsons car also made a U-turn and gave chase to the speeding Toyota car. The chase lasted for less than 5 minutes, until said car made a stop along Bonifacio Drive, at the foot of Del Pan Bridge. Col. Lacson and his men searched the car and they found several firearms. When the cargo truck was searched, 305 cases of blue seal or untaxed cigarettes were found inside said truck in possession of Rimorin.

RTC convicted petitioner of smuggling. CA affirmed. The CA, however, found no sufficient evidence against the other co-accused who, unlike petitioner, were not found to be in possession of any blue seal cigarettes. Hence, this Petition. Petitioner argues that he cannot be convicted of smuggling under the Tariff and Customs Code, because respondent failed to present the seized contraband cigarettes in court. Equating the actual physical evidence -- the 305 cases of blue seal cigarettes -- with the corpus delicti, he urges this Court to rule that the failure to present it was fatal to respondents cause.

ISSUE:

Whether or not it was necessary to present the seized goods to prove the corpus delicti.

RULING:

No. Corpus delicti refers to the fact of the commission of the crime charged or to the body or substance of the crime. In its legal sense, it does not refer to the ransom money in the crime of kidnapping for ransom or to the body of the person murdered. Hence, to prove the corpus delicti, it is sufficient for the prosecution to be able show that (1) a certain fact has been proven -- say, a person has died or a building has been burned; and (2) a particular person is criminally responsible for the act.Since the corpus delicti is the fact of the commission of the crime, the Court has ruled that even a single witness uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. Corpus delicti may even be established by circumstantial evidence.

Both the RTC and the CA ruled that the corpus delicti had been competently established by respondents evidence, which consisted of the testimonies of credible witnesses and the Custody Receipt issued by the Bureau of Customs for the confiscated goods. Col. Panfilo Lacson's testimony on the apprehension of petitioner and on the seizure of the blue seal cigarettes was clear and straight forward. Moreover, it is well-settled that findings of fact of lower courts are binding on this Court, absent any showing that they overlooked or misinterpreted facts or circumstances of weight and substance. This doctrine applies particularly to this case in which the RTCs findings, as far as petitioner is concerned, were affirmed by the appellate court.

PEOPLE OF THE PHILIPPINES, *Appellee*, *-versus-* JOHNNY M. QUIZON, *Appellant*.
G.R. No. 142532, November 18, 2003

The circumstances proved must be congruous with each other, consistent with the hypothesis that the accused is guilty and inconsistent with any other hypothesis except that of guilt. A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.

FACTS:

Conchita Pasquin was found dead in her office at Suarez Travel Services. The trial court found Johnny Quizon guilty beyond reasonable doubt for robbery with homicide with a penalty of reclusion perpetua. The testimony of the prosecutions witnesses showed that at around 1pm to 2pm of Sept. 5, 1997, Rowena Abril, a secretary of the adjacent office, heard loud noises coming from Conchita's office. 25 minutes after, she saw a Quizon walking hurriedly who came from Conchita's office. At 4:30pm, she went to see Conchita but the main door was closed and since nobody opened the door, she decided to leave. At lunch time that day, Myla Miclat together with her live-in partner Roel Sicangco went to see Conchita to hand over 17,000 pesos in payment for Myla's round trip plane fare. While they were inside Conchita's office, Johnny Quizon, whom Conchita introduced as her nephew, came in. Conchita told Myla that her nephew was a former drug addict, and that she was helping him mend his ways. Quizon was present when Myla gave the money to Conchita. Conchita told Myla that she was going to purchase the ticket and instructed her to return later that day to pick it up. When Myla returned at 7pm, she knocked at the door but nobody answered. The following day around 5:30am, Myla returned to Conchitas office. Again, nobody was in sight. Myla went to the agency's

neighbor to inquire if there was someone inside the office. The neighbor climbed, peeped inside and saw a body covered with a blanket. The policemen forced open the door and found the body of Conchita wrapped with a white blanket. Conchita's jewelry box and the money paid by Myla were missing. Quizon was not found and he never showed up in the wake and did not attend the burial. The trial court held that based on circumstantial evidence, Quizon is guilty beyond reasonable doubt. The circumstances clearly made an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the perpetrator of the crime. The accused appealed. The OSG averred that the existence of every bit of circumstantial evidence was not satisfactorily established.

ISSUE:

Whether or not the circumstantial evidence found by the trial court could produce a conviction beyond reasonable doubt.

RULING:

No. Section 4, Rule 133 of the Revised Rules on Criminal Procedure provides that for circumstantial evidence to be sufficient for conviction, it must be shown that (a) that there is more than one circumstance and the facts from which the inferences are derived have been firmly established and (b) that the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The foregoing elements must all be obtaining in order to aptly warrant the conviction of an accused. The circumstances proved must be congruous with each other, consistent with the hypothesis that the accused is guilty and inconsistent with any other hypothesis except that of guilt. A judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.

In this case, the circumstances recited by the trial court would be insufficient to create in the mind of the Court a moral certainty that appellant was the one responsible for the commission of the crime. Quizon's mere presence at the locus criminis would be inadequate to implicate him in the commission of the crime. No evidence was adduced that Quizon was the last person to see or talk to the victim before she was killed. Furthermore, even while the trial court had observed that Conchita's jewelry and money were never found, no evidence was introduced that Quizon had them, or that he had them in his possession at anytime after Conchita's death. The fact that Quizon did not attend Conchita's wake is not an indication of either flight or guilt. He was warned against going to the wake after he earned the ire of their relatives who had suspected him to be the killer. Significantly, no ill-motive was ascribed on Quizon to either kill or rob his own aunt. The circumstances recited by the trial court might be enough to create some kind of suspicion on the part of the trial court of appellants involvement, but suspicion is not enough to warrant conviction. A finding of guilt based on conjecture, even if likely, cannot satisfy the need for evidence required for a pronouncement of guilt, i.e., proof beyond reasonable doubt of the complicity in the crime. No matter how weak the defense is, it is still imperative for the prosecution to prove the guilt of the accused beyond reasonable doubt. An accused has the right to be presumed innocent, and this presumption prevails until and unless it is overturned by competent and credible evidence proving his guilt beyond reasonable doubt. In case of any reservation against the guilt of accused, the Court should entertain no other alternative but to acquit him. Therefore, Quizon is acquitted.

PEOPLE OF THE PHILIPPINES vs. RUBEN BARON

G.R. No. 213215, January 11, 2016, LEONEN, *J.*

Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

FACTS:

Ruben Baron was charged with and convicted of the crime of rape with homicide by the trial court.

The Court of Appeals affirmed the conviction. Before the Supreme Court, Baron contends that the prosecution has not established his involvement with certainty. He bewails the prosecution's reliance on supposedly tenuous circumstantial evidence.

ISSUE:

Whether or not Baron was properly convicted of the crime on the basis of mere circumstantial evidence.

RULING:

YES. The requirements for circumstantial evidence to sustain a conviction are settled. Rule 133, Section 4 of the Revised Rules on Evidence provides:

Section 4. Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Moreover, "factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."

A careful examination of the records shows that there is nothing that warrants a reversal of the Decisions of the Regional Trial Court and of the Court of Appeals. As pointed out by the Court of Appeals, a multiplicity of circumstances, which were attested to by credible witnesses and duly established from the evidence, points to no other conclusion than that Baron was responsible for the rape and killing of the seven-year-old child victim.