

SANGGUNANG BAYAN OF GUINDULMAN, BOHOL, PETITIONER, VS. JUDGE MANUEL A. DE CASTRO, ACTING PRESIDING JUDGE, MCTC, GUINDULMAN-DUERO, BOHOL, RESPONDENT.*A.M. No. MTJ-03-1487. December 01, 2003*

Ponente: AUSTRIA-MARTINEZ, J.

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Before us is an administrative complaint against Judge Manuel A. de Castro, Acting Presiding Judge, Municipal Circuit Trial Court (MCTC), Guindulman-Duero, Bohol for violations of Administrative Circular No. 3-99, Section 1(f), Rule 116 of the Revised Rules on Criminal Procedure and Rule 2.01 of the Code of Judicial Conduct; for arbitrary release of the accused in Criminal Case No. G-1912[1] and for not imposing the proper penalty provided for in Sec. 90, R.A. No. 8550, otherwise known as The Philippine Fisheries Code of 1998.

On May 20, 2002, the Sangguniang Bayan of Guindulman, Bohol (Sangguniang Bayan for brevity) passed Resolution No. 2002-05-109 requesting the Executive Presiding Judge of the Regional Trial Court of Bohol and the Chief Justice of the Supreme Court of the Philippines to conduct and initiate an investigation regarding the alleged arbitrary release of the accused in Criminal Case No. G-1912. Said request was made as a consequence of the series of events which began in the early morning of May 17, 2002 when lawmen apprehended the boat captain and eight crew members of the fishing boat B/B Junida-J who were fishing within the vicinity of the municipal waters and fish sanctuary of Basdio, Guindulman, Bohol with a ring net (known locally as "licom"). Charges for violation of Sections 86, 90 and 96 of Republic Act No. 8550 were immediately filed with the MCTC, Guindulman-Duero, Bohol, presided over in an acting capacity by Judge Manuel A. de Castro (hereinafter referred to as respondent). In the morning of the very next day, a Saturday, two of the accused, namely: Narciso J. Jusay, Jr. (boat owner) and Rolando T. Amistoso (boat captain) were released from detention upon order of respondent. It appears that respondent held a court session on May 18, 2002, despite the fact that it was a Saturday, and proceeded to arraign both accused who pleaded guilty. A certain SPO1 Floro P. Felicia acted as prosecutor. Thereupon, respondent issued an Order dated May 18, 2002, which we quote verbatim:

Before summons could be served, accused Narciso J. Jusay, Jr. (Owner), Rolando T. Amistoso (Boat Captain), of B-B Junida-J, requested the court for an immediate arraignment because they will plead guilty and pay the penalty of fine as first offenders of the above-mentioned charged for Violation of Section 86, 90 and 96, RA 8550.

Accordingly, the Court conducted immediate arraignment of the said accused, and after they plead guilty, the Court sentences them to pay a fine in the total sum of Five Thousand Pesos (P5,000.00), which is the fine imposable on first offenders of the above-mentioned charge.

WHEREFORE, let the persons of the accused Narciso J. Jusay, Jr. and Rolando T. Amistoso,[2] be released immediately from detention upon receipt of this order, and let also the fishing boat "B/B Junida-J, which was impounded by the Police authorities of Guindulman, Bohol, be turned-over to the boat owner.

SO ORDERED.

Guindulman, Bohol, Philippines, May 18, 2002

MANUEL A. DE CASTRO

Acting MCTC Judge

Fine paid under O.R. No. 12390582

In the amount of Five Thousand Pesos (P5,000.00)

Dated May 18, 2002[3]

Surprised by such turn of events, the Sangguniang Bayan passed the aforementioned Resolution No. 2002-05-109 on May 20, 2002, and a copy thereof was received by the Office of the Chief Justice, Supreme Court on June 25, 2002. The same was referred to Deputy Court Administrator Zenaida N. Elepaño.

On August 5, 2002, DCA Elepaño referred the matter to Executive Judge Dionisio R. Calibo, Jr., Regional Trial Court, Loay, Bohol for comment/appropriate action. Judge Calibo required respondent to submit his Comment/Explanation on the alleged arbitrary release of the accused in Criminal Case No. G-1912.

Judge de Castro submitted his Comment/Explanation on August 27, 2002.[4] He stated that at around 8:00 in the morning of May 18, 2002, a Saturday, SPO1 Floro P. Felicia arrived at his house and informed him that accused Narciso J. Jusay, Jr. and Rolando Amistoso are requesting for an immediate arraignment because they learned that respondent judge only serves the court of Guindulman on Fridays, and if they wait until that day, then the other nine crew members would be placed in the predicament of not having enough for their daily sustenance while the accused remain in detention and because they fear that their fishing boat, which has no safe anchorage, would be damaged; that they intend to plead guilty and pay the fine imposed by the court. Relying on such representation, respondent judge acceded to the request and commanded SPO1 Felicia to fetch the Clerk of Court for the formal arraignment of the accused. Respondent held court session that Saturday and called the subject criminal case for arraignment, with SPO1 Felicia acting as prosecutor. While the complaint was being read, respondent noticed that although the charges were for violation of Sections 86, 90 and 96 of R.A. No. 8550, the facts alleged in the body of the complaint as well as in the affidavits of prosecution witnesses made out a case for violation of Section 90 of the aforementioned law only, that is, fishing with the use of ring net or "licom". Thus, respondent arraigned accused only on charges of violation of Section 90.[5] Accused Jusay, Jr. and Amistoso waived their right to counsel and pleaded guilty. Respondent then issued the Order in question and upon payment of the fine of P5,000.00, both accused were released from jail.

Reacting on the Comment/Explanation of respondent, the Sangguniang Bayan sent a letter dated October 2, 2002 to Executive Judge Calibo, Jr. and raised several issues, to wit:

Now with the explanation of Judge Manuel de Castro, specific salient points/questions surfaced as follows:

- Whether an immediate arraignment on a Saturday is appropriate for a case as major as illegal fishing;
- Whether the problem on subsistence of the accused is sufficient reason to conduct an immediate arraignment;
- Whether the alleged arraignment was proper even if the Chief of Police was not informed and his supposed representative was not authorized and the prosecution witnesses were not called to attend;
- The complaint as filed by SPO1 Henry Salada, PNP and approved by SPO4 Juanito Janiola, Acting Chief of Police, involved 3 principal accused and 9 accessories and yet only 2 accused pleaded guilty;
- There is no satisfactory reason in reducing the three violations of the accused as pointed out by the prosecution to only one; and

- In the transcript of the stenographic notes during the immediate arraignment, the representative of the prosecution seemed not to act as one.[6]

On November 19, 2002, Executive Judge Calibo, Jr. accordingly conducted an investigation. He ordered the police officers involved to appear before the court so as to shed additional light on the incident.

SPO1 Felicia testified as follows: At around 8:30 in the morning of Saturday, May 18, 2002, he was called upon by respondent to attend the arraignment of the accused because they will plead guilty. He denied the claim of respondent that it was he (SPO1 Felicia) who approached respondent Judge to request for an immediate arraignment for the accused. He was the one who represented the prosecution because at that time, the Acting Chief of Police was absent and there were no other senior policeman to appear for the prosecution. It was normally police investigator SPO1 Henry Salada who is designated to act as prosecutor, but at that particular time, Salada was also out on a follow-up patrol to locate the errant fishing boat, thus, he was the one who appeared for the prosecution, which he has already done several times in the past.[7]

SPO1 Henry Salada testified: It was the first time that an arraignment was conducted by the MCTC on a Saturday. He stated that SPO1 Felicia is not authorized to appear as prosecutor in the arraignment of cases, although it has been the practice of respondent judge to just call any of the policemen, in the absence of the Chief of Police, to represent the prosecution, usually in collaboration with a lawyer as private prosecutor. Moreover, SPO1 Felicia would appear for the prosecution only during regular hearings and never for an arraignment. This incident is the very first time that respondent judge called a police officer other than himself (Salada) to prosecute a case even if there is no private lawyer present during the hearing. During the arraignment, the Fish Wardens who assisted in arresting the accused and their crew were neither notified nor required to attend.[8]

SPO4 Juanito Janiola, Acting Chief of Police of Guindulman Municipal Police, testified, as follows: He had no knowledge about the arraignment held on that particular Saturday because he was out trying to locate the fishing boat. What was taken into custody were only the icer and the service pump boat, not the fishing boat itself, thus, the fishing boat was able to get away. When he returned to the police station at around 3:00 in the afternoon of that Saturday, he was surprised when SPO1 Salada asked him why the accused were released. That was the only time he was handed a copy of the assailed Order of respondent judge. SPO1 Felicia never informed him of the arraignment that took place. He did not leave instructions that in major cases, only someone who knows how to prosecute should represent his office because he did not expect that arraignment could be done on a Saturday. He was then surprised that the arraignment was done on a Saturday. That was the first time it happened and, in his opinion, the incident can be considered as an irregularity.[9]

The Provincial Legal Officer of the Province of Bohol also submitted his Comments.[10]

On January 27, 2003, the Office of DCA Elepaño received Executive Judge Calibo, Jr.'s "Investigation Report Relative to MCTC Crim. Case No. G-1912 as Requested by the Sangguniang Bayan of Guindulman, Bohol in its Resolution No. 2002-05-109" with the following findings:

- There seems to be a discrepancy between the claims of Judge de Castro and SPO1 Felicia. Judge de Castro's claim that it was SPO1 Felicia who informed him about the request of the accused for an early arraignment was denied by SPO1 Felicia who claims that it was the other way around, i.e., it was Judge de Castro who had him fetched to attend the arraignment;
- There is no mention in the affidavit of SPO1 Felicia (Annex "N") as well as in the joint affidavit of the municipal fish wardens (Annex "O") that Narciso Jusay, Jr., the registered fishing boat owner, was among those apprehended by the team; in fact, he is not even mentioned by SPO1 Felicia in his affidavit. Yet, all of a sudden, at 8 a.m. of that Saturday, he was suddenly in court and allegedly arraigned together with the boat

captain (as the diesel mechanic was at large). There is no way of finding out if the one who appeared in court as Narciso Jusay, Jr. was in fact not an impostor as he and the boat captain were not required to sign the judgment;

- Judge de Castro should have issued a "Decision" not a mere "Order" (Annex "P");

- Although the "Order" mentions that the accused will plead guilty "as first offenders of the above-mentioned charged (sic) for Violation of Section 86, 90 and 96, R.A. 8550" (which involves three violations, and therefore, three separate sentences), he does not explain in his "Order" (actually, a Decision) why he imposes a total fine of only P5,000 for three offenses;

- There is nothing in the court record to show that the accused were duly informed about their constitutional right to counsel. The "Order" does not even mention if someone appeared for the prosecution;

- It was not correct for the judge to conclude in his "Order" that the sum of P5,000.00 "is the fine imposable on first offenders of the above-mentioned charge inasmuch as the amount arrived at was purely the result of judicial discretion;

- The judge may have exaggerated the right of the accused to a speedy trial and negated the equally important right of the prosecution to their day in court and to due process. He could have given the prosecution a chance to amend its complaint, e.g. to expressly specify the violations committed under Sections 86 and 96 of R.A. 8550. For that matter, he could have waited for SPO1 Salada (whom he knows to be the police investigator-prosecutor of PNP-Guindulman and the one who prepared the complaint) to report on Monday. After all, as he pointed out, the arraignment would not take too much time and he can afford to be a little late in the other sala he has to attend to. In other words, his actuations did make him look like he was acting more like the counsel for the accused;

- The Provincial Legal Officer, Atty. Angel Ucat, notes in his Comments (Annex "L") that the earlier copy (Annex "Q") of the questioned Order (Annex "P") which his staff procured from the 9[th] MCTC (following the SB request to investigate the incident) does not contain the alleged superimposition of the name Rolando T. Amistoso in Annex "P" submitted by Judge de Castro to the undersigned;

- Curiously, Judge de Castro states in his Order ". . . Let the fishing boat . . . which was impounded by the police authorities of Guindulman, Bohol, be turned over to the boat owner." Actually, as SPO4 Janiola, SPO1 Salada, and SPO1 Felicia admitted, the fishing boat was never impounded as it disappeared after the incident;

- Finally, and what could probably be the blatant and undeniable irregularity in the questioned Order is why the respondent judge chose to impose only Penalty No. 2 (the fine) and ignore the Penalty Nos. 1 and 3 of Section 90, R.A. No. 8550.

...

In other words, the non-imposition[11] of Penalty Nos. 1 and 3 is expressly provided by law; hence, not included in the discretion of the judge. Accordingly, the boat captain should have been slapped a penalty of imprisonment; only the owner should have been fined, not the boat captain; and the Order should have included the confiscation and forfeiture of the fish catch.[12]

...

On April 8, 2003, this Court issued a Resolution noting Resolution No. 2002-05-109, dated May 20, 2002 of the Sangguniang Bayan and treating the same as an administrative complaint against respondent and directing him to file his Comment on the matters raised in said Resolution No. 2002-05-109.

On June 9, 2003, we received respondent's Comment/Explanation dated May 19, 2003 which merely reiterated the statements he made in his Comment/Explanation dated August 23, 2002, submitted to the investigating judge.

The matter was referred to the Office of the Court Administrator for evaluation, report and recommendation, and in a Memorandum dated September 16, 2003, the Court Administrator found respondent Judge administratively liable for the following acts:

a)

Violation of Administrative Circular No. 3-99 dated 15 January 1999 when he arraigned the accused on a Saturday. The aforesaid circular provides that court sessions should be held on Mondays to Fridays;

b)

Violation of Sec. 1(f), Rule 116 of the Revised Rules on Criminal Procedure which requires the presence of the private offended party at the arraignment for purposes of plea bargaining, determination of civil liability and other matters requiring his presence;

c)

Imposing a penalty of fine to the boat captain, who should have been meted the penalty of imprisonment of two (2) years to six (6) years, as provided in R.A. No. 8550; and

d)

Committing undue haste in conducting the arraignment of the accused, thus giving the impression that he is partial in favor of the accused.[13]

recommending that respondent judge be fined in the amount of P20,000.00 for Gross Ignorance of the Law or Procedure with a stern warning that commission of similar acts in the future will be dealt with more severely.

We approve the foregoing findings and recommendations except as to the recommended penalty and some other modifications as will be discussed forthwith.

Verily, respondent judge committed serious irregularities in the procedures laid down by the Supreme Court, thereby giving the impression that he is favoring the accused to the detriment of the interests of the State.

Respondent set the arraignment of the accused the day following their arrest which is a Saturday. The holding of court session on a Saturday is a blatant violation of Administrative Circular No. 3-99, which provides that "[t]he session hours of all Regional Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall be from 8:30 in the morning to noon and from 2:00 to 4:30 in the afternoon, from Monday to Friday."

Worse, respondent failed to send a written notice of said arraignment to the offended party. Sec. 1(f), Rule 116 of the Revised Rules on Criminal Procedure requires such notice, to wit:

(f) The private offended party shall be required to appear at the arraignment for purposes of plea bargaining, determination of civil liability, and other matters requiring his presence. In case of failure of the offended party to appear despite due notice, the court may allow the accused to enter a plea of guilty to a lesser offense which is necessarily included in the offense charged with the conformity of the trial prosecutor alone.

Considering that the offended party is the State, its representative, in this case, are the deputized Municipal Fish Wardens.[14] Respondent had no justifiable reason why he failed to notify them. Their names are mentioned at the bottom portion of the complaint. By setting the arraignment on a Saturday and failing to notify them,

respondent eroded public confidence in the integrity and impartiality of the Judiciary, clearly in violation of Rule 2.01 of the Code of Judicial Conduct, which provides:

A judge should behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Absent a written notice duly sent to all parties concerned necessarily produces an impression of partiality of the court in favor of the accused. Respondent must know that it is not only the accused who has rights. The prosecution likewise has the right to a fair trial. Thus, in *Dimatulac vs. Hon. Villon*,^[15] we held:

. . . The judge's action must not impair the substantial rights of the accused, nor the right of the State and offended party to due process of law.

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interest of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.^[16]

Furthermore, the indecent undue haste with which the accused were arraigned, the arbitrary imposition of penalties on the accused, the consequent release of the accused and termination of the case, constitute a patent denial of the prosecution of the opportunity to fully protect the interest of the State.

Moreover, we note that respondent failed to comply with the basic and fundamental constitutional mandate that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.^[17] The "Order" issued by the respondent Judge fell short of the standard. As it is, the entire proceedings undertaken by respondent Judge in Criminal Case No. G-1912 is tainted with irregularity.

Further, as correctly pointed out by the investigating judge, if indeed the complaint was duplicitous, respondent could have given the prosecution a chance to amend its complaint, pursuant to Section 14, Rule 110 of the Revised Rules of Criminal Procedure, to wit:

SEC. 14. Amendment. – The information or complaint may be amended, in substance or form, without leave of court, at any time before the accused pleads; and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused.

. . .

If it appears at any time before judgment that a mistake has been named in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused would not be placed thereby in double jeopardy and may also require the witnesses to give bail for their appearance at the trial.

Finally, the penalty of only a fine of P5,000.00 imposed by respondent on both accused in the subject criminal case reflects his gross ignorance or absolute disregard of the provisions of Republic Act No. 8550.

In the case of *In Re: Joaquin T. Borromeo*, we held:

This Court has repeatedly and uniformly ruled that a judge may not be held administratively accountable for every erroneous order or decision he renders. To hold otherwise would be nothing short of harassment and would make his position doubly unbearable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. The error must be gross or patent, deliberate and malicious, or incurred with evident bad faith; it is only in these cases that administrative sanctions are

called for as an imperative duty of the Supreme Court.[18]

In the instant case, the complained acts of the respondent judge are gross, deliberate and patently prejudicial to the interest of the judiciary.

Section 90 of said law, as earlier reproduced in the early part of herein Resolution, clearly enumerates the penalties that should be imposed on violators thereof. It specifically imposes a penalty of imprisonment from two years to six years on the boat captain and master fisherman of the vessel, a fine ranging from P2,000.00 to P20,000.00 on the boat owner/operator; and, confiscation and forfeiture of the catch. Clearly therefrom, the trial court may only exercise its discretion as to the amount of fine to be meted out on the boat owner, in this case, accused Jusay, Jr., but it is not within the discretion of the court whether or not to impose the penalty of imprisonment on boat captain Amistoso. Upon a finding of guilt, it is mandatory for the court to impose the penalty of imprisonment on the accused boat captain Amistoso. Respondent, in imposing only a fine of P5,000.00 for both the boat owner and boat captain, has not been able to justify why he disregarded with impunity the proper penalties that should have been imposed on the guilty offenders.

The actuation of respondent is a clear example of gross ignorance of the law or procedure. In *De Guzman, Jr. vs. Sison*[19] the Court held thus:

To reiterate, observance of the law, which he is bound to know is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be constitutive of gross ignorance of the law. A judge should be the embodiment of competence, integrity and independence. It is a pressing responsibility of judges to keep abreast with the law and the changes therein for ignorance of the law, which everyone is bound to know, excuses no one, not even judges. Indeed, it has been said that -- when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too viscious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.[20] (Emphasis supplied)

And although a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that selective immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogative.[21] In the present case, respondent impudently misused his authority to impose the penalty under the law which we cannot countenance. If judges wantonly misuse the powers vested in them by law, there will not only be confusion in the administration of justice but even also oppressive disregard of the basic requirements of due process.[22]

Thus, we also find respondent judge guilty of the serious charge of Gross Ignorance of the Law or Procedure under paragraph 9, Sec. 8, Rule 140 of the Rules of Court, as amended, punishable with sanctions enumerated under Section 11, Rule 140 of the same Rules, to wit:

SEC. 11. Sanctions. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, That the forfeiture of benefits shall in no case include accrued leave credits;
- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- A fine of more than P20,000.00 but not exceeding P40,000.00.

However, we note that there is nothing on record to show that respondent had been administratively charged with any wrongdoing in the past. Considering that this is his first offense and in the absence of proof that the acts were committed for monetary consideration, the Court finds it proper to temper the penalty to be meted out and extend liberality to respondent by imposing the penalty of fine of P40,000.00.

WHEREFORE, for Gross Ignorance of the Law and Procedure and violation of Rule 2.01 of the Code of Judicial Conduct, respondent Judge Manuel A. de Castro is FINED Forty Thousand Pesos (P40,000.00) with a STERN WARNING that a commission of similar acts in the future will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.

[1] Entitled, "People of the Philippines, Plaintiff vs. Narciso J. Jusay, Jr. (Owner), Rolando T. Amistoso (Boat Captain) and Alex Sanillo (Master Diesel Mechanic) At-large, Accused"

[2] The name Rolando T. Amistoso appears to be merely inserted.

[3] Annex "9" of Judge Manuel A. de Castro's Comment/Explanation, Rollo, p. 90.

[4] Rollo, p. 111.

[5] Sec. 90. Use of Active Gear in the Municipal Waters and Bays and Other Fishery Management Areas. - It shall be unlawful to engage in fishing in municipal waters and in all bays as well as other fishery management areas using active fishing gears as defined in this Code.

Violators of the above prohibitions shall suffer the following penalties:

(1)

The boat captain and master fisherman of the vessels who participated in the violation shall suffer the penalty of imprisonment from two (2) years to six (6) years;

(2)

The owner/operator of the vessel shall be fined from Two thousand pesos (P2,000.00) to Twenty thousand pesos (P20,000.00) upon the discretion of the court.

If the owner/operator is a corporation, the penalty shall be imposed on the chief executive officer of the corporation.

If the owner/operator is a partnership the penalty shall be imposed on the managing partner;

(3)

The catch shall be confiscated and forfeited.

[6] Annex "G", Rollo, p. 124.

[7] TSN, November 22, 2002.

[8] TSN, November 29, 2002.

[9] TSN, December 10, 2002.

[10] Rollo, p. 174.

[11] Should read "imposition".

[12] Investigation Report, pp. 7-10, Rollo, pp. 101-104.

[13] Memorandum dated September 16, 2003, p. 5, Rollo, p. 218.

[14] Namely: Elpidio J. Pacatang, Jr., Demetrio F. Jandayan and Gualberto Pacatang, who had executed a Joint Affidavit that was the basis of the filing of the respondent against the accused Boat owner Jusay, Boat Captain Amistoso and Master Diesel Mechanic Alex Sanillo (at-large).

[15] G.R. No. 127107, October 12, 1998, 358 Phil. 333.

[16] Id. at p. 365.

[17] Sec. 14, Article VIII, 1987 Constitution.

[18] 241 SCRA 405, 464-465 (1995); Flores vs. Abesamis, 275 SCRA 302, 317 (1997).

[19] A.M. No. RTJ-01-1629, 26 March 2001, 355 SCRA 69.

[20] Id. at pp. 84-85.

[21] De Guzman, Jr. vs. Sison, 355 SCRA 69, 82-83 (2001).

[22] Id., p. 431.

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