Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DANDY L. DUNGO and GREGORIO A. SIBAL, JR.,
Petitioners,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 209464

Present:

CARPIO, *J., Chairperson,*
BERSAMIN,*
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

01 JUL 2015

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DECISION

MENDOZA, *J.*:

The fraternal contract should not be signed in blood, celebrated with pain, marred by injuries, and perpetrated through suffering. That is the essence of Republic Act *(R.A.)* No. 8049 or the Anti-Hazing Law of 1995.

This is a petition for review on *certiorari* seeking to reverse and set aside the April 26, 2013 Decision[1] and the October 8, 2013 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR-H.C. No. 05046, which affirmed the February 23, 2011 Decision[3] of the Regional Trial Court, Branch 36, Calamba City *(RTC)*. The RTC found petitioners Dandy L. Dungo *(Dungo)* and Gregorio A. Sibal, Jr. *(Sibal),* guilty beyond reasonable doubt of the crime of violation of Section 4 of R.A. No. 8049, and sentenced them to suffer the penalty of *reclusion perpetua.*

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* Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2079, dated June 29, 2015.
[1] Penned by Associate Justice Danton Q. Bueser with Associate Justice Amelita G. Tolentino and Associate Justice Ramon R. Garcia, concurring of Court of Appeals Fourth Division; *rollo,* pp. 66-88.
[2] Id. at 90-91.
[3] Penned by Presiding Judge Medel Arnaldo B. Belen; id. at 30-64.

The Facts

On February 1, 2006, the Office of the City Prosecutor of Calamba, Laguna, filed the Information[4] against the petitioners before the RTC, the accusatory portion of which reads:

> That on or about 2:30 in the early morning of January 14, 2006, at Villa Novaliches, Brgy. Pansol, Calamba City, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused, during an initiation rite and being then members of Alpha Phi Omega fraternity and present thereat, in conspiracy with more or less twenty other members and officers, whose identity is not yet known, did then and there willfully, unlawfully and feloniously assault and use personal violence upon one MARLON VILLANUEVA y MEJILLA, a neophyte thereof and as condition for his admission to the fraternity, thereby subjecting him to physical harm, resulting to his death, to the damage and prejudice of the heirs of the victim.
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> CONTRARY TO LAW.

On February 7, 2006, upon motion, the RTC admitted the Amended Information[5] which reads:

> That on or about 2:30 in the early morning of January 14, 2006, at Villa Novaliches, Brgy. Pansol, Calamba City, Province of Laguna and within the jurisdiction of the Honorable Court, the above-name accused, during a planned initiation rite and being then officers and members of Alpha Phi Omega fraternity and present thereat, in conspiracy with more or less twenty other members and officers, whose identity is not yet known, did then and there willfully, unlawfully and feloniously assault and use personal violence upon one MARLON VILLANUEVA y MEJILLA, a neophyte thereof and as condition for his admission to the fraternity, thereby subjecting him to physical harm, resulting to his death, to the damage and prejudice of the heirs of the victim.
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> CONTRARY TO LAW.

On February 7, 2006, Dungo filed a motion to quash for lack of probable cause,[6] but it was denied by the trial court because the ground cited therein was not provided by law and jurisprudence. When arraigned, the petitioners pleaded not guilty to the crime charged.[7] Thereafter, trial ensued.

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[4] Records, Vol. I, p. 1.
[5] Id. at 49.
[6] Id. at 41-44.
[7] Id. at 58.

Version of the Prosecution

The prosecution presented twenty (20) witnesses to prove the crime charged. Their testimonies are summarized as follows:

At around 3:20 o'clock in the morning of January 14, 2006, the victim Marlon Villanueva *(Villanueva)* was brought to the emergency room of Dr. Jose P. Rizal District Hospital *(JP Rizal Hospital)*. Dr. Ramon Masilungan *(Dr. Masilungan)*, who was then the attending physician at the emergency room, observed that Villanueva was motionless, not breathing and had no heartbeat. Dr. Masilungan tried to revive Villanueva for about 15 to 30 minutes. Villanueva, however, did not respond to the resuscitation and was pronounced dead. Dr. Masilungan noticed a big contusion hematoma on the left side of the victim's face and several injuries on his arms and legs. He further attested that Villanueva's face was cyanotic, meaning that blood was no longer running through his body due to lack of oxygen; and when he pulled down Villanueva's pants, he saw large contusions on both legs, which extended from the upper portion of the thighs, down to the couplexial portion, or back of the knees.

Dr. Masilungan disclosed that two (2) men brought Villanueva to the hospital. The two told him that they found Villanueva lying motionless on the ground at a store in Brgy. Pansol, Calamba City, and brought him to the hospital. When he asked them where they came from, one of them answered that they came from Los Baños, Laguna, *en route* to San Pablo City. He questioned them on how they found Villanueva, when the latter was in Brgy. Pansol, Calamba City. One of the men just said that they were headed somewhere else.

Dr. Masilungan reduced his findings in a medico-legal report.[8] Due to the nature, extent and location of the injuries, he opined that Villanueva was a victim of hazing. He was familiar with hazing injuries because he had undergone hazing himself when he was a student, and also because of his experience in treating victims of hazing incidents.

Dr. Roy Camarillo *(Dr. Camarillo)*, Medico-Legal Officer of the Philippine National Police Crime Laboratory *(PNP-CL)* in Region IV, Camp Vicente Lim, Canlubang, Calamba City, testified that he performed an autopsy on the body of Villanueva on January 14, 2006 and placed down his findings in an autopsy report.[9] Upon examination of the body, he found various external injuries in the head, trunk and extremities. There were thirty-three (33) external injuries, with various severity and nature. He concluded that the cause of death was subdural hemorrhage due to head injury contusion-hematoma. Based on multiple injuries and contusions on

[8] Id. at 301.
[9] Id. at 17-22.

the body, and his previous examinations of hazing injuries, Dr. Camarillo opined that these injuries were hazing-related. During the autopsy, he retrieved two (2) matchsticks from the cadaver with the marking of Alpha Phi Omega *(APO)* Fraternity.[10]

Susan Ignacio *(Ignacio)* was the owner of the *sari-sari* store located at Purok 5, Pansol, Calamba City, in front of Villa Novaliches Resort, which was barely ten steps away. On January 13, 2006, at around 8:30 to 9:00 o'clock in the evening, she was tending her store when she saw a jeepney with more than twenty (20) persons arrive at the resort. Ignacio identified Dungo as the person seated beside the driver of the jeepney.[11] She estimated the ages of these persons in the group to be between 20 to 30 years old. They were in civilian clothes, while the other men wore white long-sleeved shirts. Before entering the resort, the men and women shook hands and embraced each other. Three (3) persons, riding on a single motorcycle, also arrived at the resort.

Ignacio saw about fifteen (15) persons gather on top of the terrace of the resort who looked like they were praying, and then the lights of the resort were turned off. Later that evening, at least three (3) of these persons went to her store to buy some items. During her testimony, she was shown photographs and she identified Christopher Braseros and Sibal as two of those who went to her store.[12] It was only on the morning of January 14, 2006 that she learned from the policemen visiting the resort that the deceased person was Villanueva.

Donato Magat *(Magat)*, a tricycle driver plying the route of Pansol, Calamba City, testified that at around 3:00 o'clock in the morning of January 14, 2006, he was waiting for passengers at the corner of Villa Novaliches Resort. A man approached him and told him that someone inside the resort needed a ride. Magat went to the resort and asked the two (2) men at the gate who needed a ride. Afterwards, he saw three (3) men in their 20's carrying another man, who looked very weak, like a vegetable, towards his tricycle. Magat touched the body of the man being carried and sensed it was cold.

Magat asked the men what happened to their companion. They replied that he had too much to drink. Then they instructed Magat to go to the nearest hospital. He drove the tricycle to JP Rizal Hospital. Upon their arrival, two of his passengers brought their unconscious companion inside the emergency room, while their other companion paid the tricycle fare. Magat then left to go home. Several days after, he learned that the person brought to the hospital had died.

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[10] Id. at 325.
[11] TSN Vol. I, June 28, 2006, p. 90.
[12] Id. at 29-31.

Abelardo Natividad *(Natividad)* and Seferino Espina y Jabay *(Espina)* were the security guards on duty at JP Rizal Hospital, from 11:00 o'clock in the evening of January 13, 2006 until 7:00 o'clock in the morning of January 14, 2006. In the early morning of January 14, 2006, two men, who signed on the logbook[13] under the names Brandon Gonzales and Jerico Paril, brought the lifeless body of a person. Pursuant to the standard operating procedure of the hospital, the security guards did not allow the two men to leave the hospital because they called the police station so that an investigation could be conducted. Two policemen arrived later at the hospital. During his testimony, Natividad identified Sibal and Dungo as the two persons who brought Villanueva to the hospital.

PO2 Alaindelon Ignacio *(PO2 Ignacio)* testified that on January 14, 2006 at around 3:30 o'clock in the early morning, Natividad called up the PNP Calamba City Station to report that a lifeless body of a man was brought to JP Rizal Hospital. When PO2 Ignacio arrived, he saw Villanueva's corpse with contusions and bite marks all over his body. PO2 Ignacio and his policemen companions then brought Dungo and Sibal to the police station. He asked them about what happened, but they invoked their right to remain silent. The policemen then proceeded to Brgy. Pansol at around 9:00 o'clock in the morning. After finding Villa Novaliches Resort, they knocked on the door and the caretaker, Maricel Capillan *(Capillan)*, opened it.

The police asked Capillan if there were University of the Philippines Los Baños *(UP Los Baños)* students who rented the resort on the evening of January 13, 2006. Capillan said yes and added that about twenty (20) persons arrived onboard a jeepney and told her that they would be renting the resort from 9:30 o'clock in the evening up to 7:00 o'clock the following morning.

Gay Czarina Sunga *(Sunga)* was a food technology student at UP Los Baños during the academic year of 2005-2006 and a member of the Symbiosis UPLB Biological Society. Around 3:00 o'clock in the afternoon of January 13, 2006, she was at their organization's *tambayan* in the UPLB Biological Sciences Building, when she noticed three (3) men seated two meters away from her. She identified the two of the three men as Sibal and Dungo.[14] They were wearing black shirts with the logo of APO. Later at 5:00 o'clock in the afternoon, two more men arrived and, with their heads bowed, approached the three men. One of them was Villanueva, who was carrying a 5-gallon water container. Dungo then stood up and asked Villanueva why the latter did not report to him when he was just at their *tambayan*. Dungo then punched Villanueva twice, but the latter just kept quiet with his head bowed. Fifteen minutes later, all the men left.

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[13] Records, Vol. I, pp. 331-332.
[14] TSN, Vol. I, August 23, 2006, p. 8.

Joey Atienza *(Atienza)* had been a good friend of Villanueva since 2004. They were roommates at the UP Los Baños Men's Dormitory and housemates at the DPS Apartment in Umali Subdivision, Los Baños, Laguna. According to Atienza, on January 9, 2006, Villanueva introduced him to Daryl Decena *(Decena)* as his APO – Theta Chapter batchmate, who was also to undergo final initiation rites on January 13, 2006.

Severino Cuevas, Director of the Students Affairs at UP Los Baños, testified that Dungo and Sibal were both members of the APO Fraternity, and that there was no record of any request for initiation or hazing activity filed by the said fraternity.

McArthur Padua of the Office of the Registrar, UP Los Baños, testified that Villanueva was a B.S. Agricultural Economics student at the UP Los Baños,[15] as evidenced by his official transcript of record.[16]

Atty. Eleno Peralta and Dina S. Carlos, officers of the Student Disciplinary Tribunal *(SDT)* of the UP Los Baños, testified that an administrative disciplinary case was filed on March 31, 2006 against the APO Fraternity regarding the death of Villanueva. They confirmed that Capilla of Villa Novaliches Resort and Irene Tan *(Tan)* of APO Sorority Theta Chapter appeared as witnesses for the complainant.[17]

Roman Miguel De Jesus, UP – Office of the Legal Aid *(UP-OLA)* supervising student, testified that he met Tan of the APO Sorority sometime between July and August 2006 in UP Diliman to convince her to testify in the criminal case. Tan, however, refused because she feared for her safety. She said that after testifying in the SDT hearing, her place in Imus, Cavite was padlocked and vandalized.

Evelyn Villanueva, mother of victim Villanueva, testified that, as a result of the death of her son, her family incurred actual damages consisting of medical, burial and funeral expenses in the aggregate amount of ₱140,000.00 which were evidenced by receipts.[18] Her husband also incurred travel expenses in the amount of ₱7,000.00 in returning to the Philippines to attend his son's wake and burial, as supported by a plane ticket.[19] She further attested that she experienced mental anguish, sleepless nights, substantial weight loss, and strained family relationship as a result of her son's death.

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[15] TSN, Vol. II, September 12, 2007, p. 8.
[16] Records, Vol. II, pp. 50-51.
[17] Records, Vol. I, pp. 360-407.
[18] Records, Vol. II, pp. 35-45.
[19] Id. at 46.

Version of the Defense

The defense presented seven (7) witnesses to prove the innocence of the petitioners. Their testimonies are summarized as follow:

Richard Cornelio *(Cornelio),* an APO Fraternity member, testified that on January 13, 2006, around 4:00 to 4:30 o'clock in the afternoon, he met Dungo at the UP Los Baños Graduate School. Dungo asked him if he would attend the initiation ceremony, and Cornelio answered in the negative because he had other things to do. At 10:00 o'clock in the evening of the same day, Cornelio again met Dungo and his girlfriend while eating a hamburger at the Burger Machine along Raymundo Street, Umali Subdivision, Los Baños, Laguna *(Raymundo Street)*. He asked Dungo if he would attend the initiation ceremony. Dungo replied that he would not because he and his girlfriend had something to do.

Ana Danife Rivera *(Rivera)*, the girlfriend of Dungo, testified that on January 13, 2006 at around 1:00 o'clock in the afternoon, Dungo came and visited her at her boarding house on Raymundo Street. Around 4:00 o'clock of the same afternoon, they went to the UP Los Baños Graduate School and saw Cornelio. Afterwards, they went back to her boarding house and stayed there from 5:00 o'clock in the afternoon to 7:00 o'clock in the evening. Then, they went to Lacxo Restaurant for dinner and left at around 10:00 o'clock in the evening. On their way back to her boarding house, they encountered Cornelio again at the Burger Machine. Dungo then stayed and slept at her boarding house. Around 2:00 o'clock in the early morning of January 14, 2006, they were roused from their sleep by a phone call from Sibal, asking Dungo to go to a resort in Pansol, Calamba City. Dungo then left the boarding house.

Dungo testified that around 1:00 o'clock in the early afternoon of January 13, 2006, he arrived at the boarding house of his girlfriend, Rivera, on Raymundo Street. At around 4:00 o'clock in the afternoon, they went to the UP Los Baños Graduate School and inquired about the requirements for a master's degree. They walked back to the boarding house and met Cornelio. They talked about their fraternity's final initiation ceremony for that night in Pansol, Calamba City. Dungo and Rivera then reached the latter's boarding house around 5:00 o'clock in the afternoon. At around 7:00 o'clock in the evening, they went out for dinner at the Lacxo Restaurant, near Crossing Junction, Los Baños. They ate and stayed at the restaurant for at least one and a half hours. Then they walked back to the boarding house of Rivera and, along the way, they met Cornelio again at the Burger Machine along Raymundo Street. Cornelio asked Dungo if he would attend their fraternity's final initiation ceremony, to which he replied in the negative. Dungo and Rivera reached the boarding house around 9:00 o'clock in the evening and they slept there.

Around 2:00 o'clock in the early morning of January 14, 2006, Dungo was roused from his sleep because Sibal was calling him on his cellphone. Sibal asked for his help, requesting him to go to Villa Novaliches Resort in Pansol, Calamba City. Upon Dungo's arrival at the resort, Sibal led him inside. There, he saw Rudolfo Castillo *(Castillo)*, a fellow APO fraternity brother, and Villanueva, who was unconscious. Dungo told them that they should bring Villanueva to the hospital. They all agreed, and Castillo called a tricycle that brought them to JP Rizal Hospital. He identified himself before the security guard as Jerico Paril because he was scared to tell his real name.

Gilbert Gopez *(Gopez)* testified that he was the Grand Chancellor of the APO – Theta Chapter for years 2005-2006. At around 7:00 o'clock in the evening of January 13, 2006, he was at the *tambayan* of their fraternity in UP Los Baños because their neophytes would be initiated that night. Around 8:30 o'clock in the evening, they met their fraternity brothers in Bagong Kalsada, Los Baños. He noticed that their neophyte, Villanueva, was with Castillo and that there was a bruise on the left side of his face. Then they boarded a jeepney and proceeded to Villa Novaliches Resort in Pansol, Calamba City. There, Gopez instructed Sibal to take Villanueva to the second floor of the resort. He confronted Castillo as to what happened to Villanueva. Around 11:00 or 11:30 o'clock in the evening, Gopez decided to cancel the final rites. He told Sibal to stay at the resort and accompany Villanueva and Castillo. Together with the other neophytes, Gopez left the resort and went back to UP Los Baños.

Sibal testified that he was a DOST Scholar at the UP Los Baños from 2002 to 2006, taking up B.S. Agricultural Chemistry. He was a Brother Actuary of the APO – Theta Chapter, and was in charge of fraternity activities, such as tree planting, free medical and dental missions, and blood donations. On January 13, 2006, at around 6:00 o'clock in the evening, he was at the fraternity's *tambayan* for the final initiation rites of their neophytes. After preparing the food for the initiation rites, Sibal, together with some neophytes, went to Bagong Kalsada, Los Baños, where he saw fellow fraternity brother Castillo with their neophyte Villanueva, who had a bruised face. Thereafter, they boarded a jeepney and proceeded to Villa Novaliches Resort in Pansol, Calamba City. Once inside the resort, he accompanied Villanueva upstairs for the latter to take a rest. A few minutes later, he went down and confronted Castillo about the bruises on Villanueva's face. He was angry and irritated with Castillo. He then stayed outside the resort until Gopez and the other neophytes came out and told him that the final initiation rite was cancelled, and that they were returning to UP Los Baños. Sibal wanted to go with them but he was ordered to stay with Villanueva and Castillo.

After the group of Gopez left, Sibal checked on the condition of Villanueva, who was sleeping on the second floor of the resort. Then he went outside for one hour, or until 1:00 o'clock in the early morning of January 14, 2006. Sibal entered the resort again and saw Villanueva, who looked unconscious, seated in one of the benches on the ground floor. Sibal inquired about Villanueva's condition but he was ignored by Castillo. He then called Dungo for help. After Dungo arrived at the resort, they hailed a tricycle and brought Villanueva to JP Rizal Hospital. There, he gave a false name to the security guard as he heard that Dungo had done the same.

The RTC Ruling

On February 23, 2011, the RTC found Dungo and Sibal guilty of the crime of violating Section 4 of the Anti-Hazing Law and sentenced them to suffer the penalty of *reclusion perpetua.* The trial court stated that the prosecution established the presence of Dungo and Sibal (1) at the UP Los Baños Campus on January 13, 2006 around 3:00 o'clock in the afternoon, by the testimony of Sunga and (2) at the Villa Novaliches Resort around 9:00 o'clock in the evening of the same day by the testimony of Ignacio. With the extensive testimonies of Dr. Masilungan and Dr. Camarillo, the prosecution also proved that Villanueva died from hazing injuries.

According to the RTC, the evidence of the prosecution undeniably proved that Villanueva, a UP Los Baños student, was a neophyte of the APO – Theta Chapter Fraternity; that Dungo and Sibal were members of the said fraternity; that on the evening of January 13, 2006, Dungo and Sibal, together with the other fraternity members, officers and alumni, brought and transported Villanueva and two other neophytes to Villa Novaliches Resort at Barangay Pansol, Calamba City, for the final initiation rites; that the initiation rites were conducted inside the resort, performed under the cover of darkness and secrecy; that due to the injuries sustained by Villanueva, the fraternity members and the other two neophytes haphazardly left the resort; and that Dungo and Sibal boarded a tricycle and brought the lifeless body of Villanueva to JP Rizal Hospital, where Villanueva was pronounced dead.

The RTC explained that even if there was no evidence that Dungo and Sibal participated to bodily assault and harm the victim, it was irrefutable that they brought Villanueva to the resort for their final initiation rites. Clearly, they did not merely induce Villanueva to attend the final initiation rites, but they also brought him to Villa Novaliches Resort.

The RTC held that the defense of denial and alibi were self-serving negative assertions. The defense of denial and alibi of Dungo, which was corroborated by the testimony of his girlfriend Rivera and his co-fraternity brother, could not be given credence. The witnesses presented by the defense were partial and could not be considered as disinterested parties. The

defense of denial of Sibal likewise failed. The corroborative testimonies of his fraternity brothers were suspect because they had so much as stake in the outcome of the criminal action.

The decretal portion of the decision reads:

> WHEREFORE, the Court finds the accused Dandy Dungo and Gregorio Sibal GUILTY of violating Section 4 of the Anti-Hazing Law and sentenced them to suffer the penalty of *RECLUSION PERPETUA* and order them to jointly and severally pay the family/heirs of Deceased Marlon Villanueva the following sums of money:
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> 1. ₱141,324.00 for and as actual damages;
> 2. ₱200,000.00 for and as moral damages;
> 3. ₱100,000.00 for and as exemplary damages; and
> 4. ₱50,000.00 for the death of Marlon Villanueva.
>
> SO ORDERED.[20]

Aggrieved, the petitioners filed a notice of appeal. In their brief, they contended that the prosecution failed to establish their guilt beyond reasonable doubt for violating R.A. No. 8049. They also assailed the constitutionality of Section 4 of the said law, which stated that mere presence in the hazing was *prima facie* evidence of participation therein, because it allegedly violated the constitutional presumption of innocence of the accused.

The CA Ruling

The CA ruled that the appeal of Dungo and Sibal was bereft of merit. It stated that, in finding them guilty of violating R.A. No. 8049, the RTC properly relied on circumstantial evidence adduced by the prosecution. The CA painstakingly discussed the unbroken chain of circumstantial evidence to convict Dungo and Sibal as principals in the crime of hazing.

It further found that the defense of denial and alibi of Dungo and Sibal failed to cast doubt on the positive identification made by the prosecution witnesses; and that denial, being inherently weak, could not prevail over the positive identification of the accused as the perpetrators of the crime.

The CA also stated that Dungo and Sibal were not only convicted based on their presence in the venue of the hazing, but also in their act of bringing the victim to Villa Novaliches Resort for the final initiation rites.

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[20] *Rollo*, p. 64.

The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the February 23, 2011 Decision of the Regional Trial Court, Branch 36 of Calamba City in CRIM. Case No. 13958-2006-C, finding accused-appellant guilty beyond reasonable doubt of Violation of R.A. 8049 is hereby AFFIRMED in TOTO.
>
> SO ORDERED.[21]

Dungo and Sibal moved for reconsideration but their motion was denied by the CA in the assailed October 8, 2013 Resolution.

Hence, this petition.

SOLE ASSIGNMENT OF ERROR

> **THE JUDGMENTS OF THE RTC AND THE CA *A QUO* CONSTITUTE A VIOLATION OF THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST THEM BECAUSE THE OFFENSE PROVED AS FOUND AND PRONOUNCED THEREBY IS DIFFERENT FROM THAT CHARGED IN THE INFORMATION, NOR DOES ONE INCLUDE OR NECESSARILY INCLUDE THE OTHER**.[22]

Petitioners Dungo and Sibal argue that the amended information charged them as they "did then and there willfully, unlawfully and feloniously assault and use personal violence upon one Marlon Villanueva y Mejilla."[23] Yet, both the RTC and the CA found them guilty of violating R.A. No. 8049 because they "[i]nduced the victim to be present"[24] during the initiation rites. The crime of hazing by inducement does not necessarily include the criminal charge of hazing by actual participation. Thus, they cannot be convicted of a crime not stated or necessarily included in the information. By reason of the foregoing, the petitioners contend that their constitutional right to be informed of the nature and cause of accusation against them has been violated.

In its Comment,[25] filed on May 23, 2014, the Office of the Solicitor General *(OSG)* asserted that Dungo and Sibal were charged in the amended information with the proper offense and convicted for such. The phrases

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[21] Id. at 87.
[22] Id. at 15.
[23] Records, Vol. I, p. 1.
[24] *Rollo*, p. 86.
[25] Id. at 125-146.

"planned initiation" and "in conspiracy with more or less twenty members and officers" in the amended information sufficiently cover "knowingly cooperated in carrying out the hazing by inducing the victim to be present thereat." The planned initiation rite would not have been accomplished were it not for the acts of the petitioners in inducing the victim to be present thereat and it was obviously conducted in conspiracy with the others.[26]

In their Reply[27] filed on September 10, 2014, Dungo and Sibal insisted that there was a variance between the offense charged of "actually participated in the infliction of physical harm," and the offense "knowingly cooperated in carrying out the hazing by inducing the victim to be present thereat."[28] The prosecution, moreover, failed to establish conspiracy because no act or circumstance was proved pointing to a joint purpose and design between and among the petitioners and the other twenty accused.

The Court's Ruling

The petition lacks merit.

Procedural Matter

An appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher court authority.[29] The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[30]

Section 13(c), Rule 124 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03, dated October 15, 2004, governs the procedure on the appeal from the CA to the Court when the penalty imposed is either *reclusion perpetua* or life imprisonment.[31] According to the said provision, "[i]n cases where the Court of Appeals imposes *reclusion*

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[26] Id. at 137.
[27] Id. at 153-163.
[28] *Rollo*, p. 155.
[29] Black's Law Dictionary, 9th ed., p. 112 (2009).
[30] *Boardwalk Business Ventures Inc. v. Villareal*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 477.
[31] Rule 124, Sec. 13. Certification or appeal of case to the Supreme Court.—

(a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.

(b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to, the Supreme Court.

(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by *notice of appeal* filed with the Court of Appeals."

Hence, an accused, upon whom the penalty of *reclusion perpetua* or life imprisonment had been imposed by the CA, can simply file a notice of appeal to allow him to pursue an appeal as a matter of right before the Court. An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties.[32] Section 13(c), Rule 124 recognizes the constitutionally conferred jurisdiction of the Court in all criminal cases in which the penalty imposed is *reclusion perpetua* or higher.[33]

An accused, nevertheless, is not precluded in resorting to an appeal by *certiorari* to the Court via Rule 45 under the Rules of Court. An appeal to this Court by petition for review on *certiorari* shall raise only questions of law.[34] Moreover, such review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons.[35]

In other words, when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Section 13(c), Rule 124 to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.

In this case, the CA affirmed the RTC decision imposing the penalty of *reclusion perpetua* upon the petitioners. The latter opted to appeal the CA decision via a petition for *certiorari* under Rule 45. Consequently, they could only raise questions of law. Oddly, the petitioners began to assail the existence of conspiracy in their reply,[36] which is a question of fact that would require an examination of the evidence presented. In the interest of

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[32] *People v. Torres, et al.*, G.R. No. 189850, September 22, 2014.
[33] Section 5, Article VIII of the 1987 Constitution.
[34] *Metropolitan Bank and Trust Company v. Ley Construction and Development Corporation*, G.R. No. 185590, December 03, 2014.
[35] Section 6, Rule 45 of the Rules of Court.
[36] *Rollo*, pp. 157-160.

justice, however, and due to the novelty of the issue presented, the Court deems it proper to open the whole case for review.[37]

Substantive Matter

In our contemporary society, hazing has been a nightmare of parents who send their children to college or university. News of deaths and horrible beatings primarily among college students due to hazing injuries continue to haunt us. Horrid images of eggplant-like buttocks and thighs and pounded arms and shoulders of young men are depicted as a fervent warning to those who dare undergo the hazing rites. The meaningless death of these promising students, and the agony, cries and ordeal of their families, resonate through the very core of our beings. But no matter how modern and sophisticated our society becomes, these barbaric acts of initiation of fraternities, sororities and other organizations continue to thrive, even within the elite grounds of the academe.

The history and phenomenon of hazing had been thoroughly discussed in the recent case of *Villareal v. People*.[38] It is believed that the fraternity system and its accompanying culture of hazing were transported by the Americans to the Philippines in the late 19th century.[39] Thus, a study of the laws and jurisprudence of the United States *(US)* on hazing can enlighten the current predicament of violent initiations in fraternities, sororities and other organizations.

United States Laws and Jurisprudence on Hazing

There are different definitions of hazing, depending on the laws of the states.[40] In the case of *People v. Lenti*,[41] the defendant therein challenged the constitutionality of the state law defining hazing on the ground of vagueness. The court rejected such contention and held that it would have been an

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[37] Exceptionally, even under the Rule 45, the Court could entertain questions of fact based on the following grounds: (1) When the conclusion is a finding grounded entirely on speculation, 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 without citation of specific evidence on which the conclusions are based;(9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) *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;* see *David v. Misamis Occidental II Electric Cooperative, Inc.*, G.R. No. 194785, July 11, 2012, 676 SCRA 367, 373-374.

[38] G.R. Nos. 151258, 154954, 155101, 178057 & 178080, February 1, 2012, 664 SCRA 519.

[39] Id. at 562.

[40] Gregory L. Acquaviva, *Protecting Students from the Wrongs of Hazing Rites: A Proposal for Strengthening New Jersey's Anti-Hazing Act*, 26 QUINNIPIAC L. REV. 308 (2008).

[41] 253 N.Y. S 2d 9, 1964.

impossible task if the legislature had attempted to define hazing specifically because fraternal organizations and associations never suffered for ideas in contriving new forms of hazing. Presently, the acceptable definition of hazing is the practice of physically or emotionally abusing newcomers to an organization as a means of initiation.[42]

Hazing can be classified into various categories including, but not limited to, acts of violence, acts of humiliation, sexual-related acts, and alcohol-related acts.[43] The physical form of hazing may include beating, branding, paddling, excessive exercise, drinking, and using drugs. Sexual hazing have included simulated sex acts, sodomy and forced kissing.[44] Moreover, hazing does not only result in physical injuries and hospitalization, but also lead to emotional damage and traumatic stress.[45]

Based on statistics and alarming frequency of hazing, states have attempted to combat hazing through the passage of state laws that prohibit such acts.[46] Forty-four states, with the exception of Alaska, Hawaii, Montana, New Mexico, South Dakota, and Wyoming, have passed anti-hazing laws.[47] The severity of these laws can range from minor penalties to a prison sentence for up to six years.[48] In the states of Illinois, Idaho, Missouri, Texas, Virginia, Wisconsin, hazing that result in death or "great bodily harm" is categorized as a felony.[49]

In Florida, the Chad Meredith Act,[50] a law named after a student who died in a hazing incident, was enacted on July 1, 2005. It provides that a person commits a third degree felony when he or she intentionally or recklessly commits any act of hazing and the hazing results in serious bodily injury or death. If a person only creates substantial risk of physical injury or death, then hazing is categorized as a first degree misdemeanor. A similar provision can be observed in the Penal Law of New York.[51]

Interestingly, some states included notable features in their anti-hazing statute to increase its effectiveness. In Alabama, Arkansas, Massachusetts, New Hampshire, South Carolina and Texas, the law imposes

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[42] Black Law's Dictionary, 9th Ed., p. 786 (2009).
[43] Colleen McGlone & George Schaefer, *After The Haze: Legal Aspects of Hazing*, 6 ES L. J. 1 (2008), citing Nadine Hoover, *National Survey: Initiation rites and athletics for NCAA Sports Team* (1999) and Colleen McGlone, *Hazing in N.C.A.A Division I Women's Athletics: An Exploratory Analysis* (2005).
[44] Id. at 39.
[45] Hank Nuwer & Christopher Bollinger, *Chapter 14 - Hazing*, Violence Goes to College: The Authoritative Guide to Prevention and Intervention, p. 207 (2009).
[46] Tamara Saunders & Chelsee Benté, *Hazing Adjudication Guide – For College and Universities*, p. 13 (2013).
[47] Id.
[48] Id.
[49] Supra note 43, at 30.
[50] F.S. § 1006.63; HB 193.
[51] NY PEN. LAW § 120.16 – 120.17.

a duty on school personnel to report hazing.[52] In fact, in Alabama, no person is allowed to knowingly permit, encourage, aid, or assist any person in committing the offense of hazing, or willfully acquiesces in its commission.[53]

Also, some states enacted statutes that have been interpreted to mean that persons are guilty of hazing even if they have the consent of the victim.[54] In New Jersey, consent is not a defense to a hazing charge, and its law permits the prosecution of offenders under other applicable criminal statutes.[55] By including these various provisions in their anti-hazing statutes, these states have removed the subjective inquiry of consent from consideration, thus, presumably allowing courts to effectively and properly adjudicate hazing cases.[56]

In the US, hazing victims can either file a criminal action, based on anti-hazing statutes, or a civil suit, arising from tort law and constitutional law, against the members of the local fraternity, the national fraternity and even against the university or college concerned.[57] Hazing, which threatens to needlessly harm students, must be attacked from whatever legal means are possible.[58]

In *State v. Brown*,[59] a member of the Alpha Kappa Alpha at Kent State University was indicted for complicity to hazing. The group physically disciplined their pledges by forcing them to stand on their heads, beating them with paddles, and smacking and striking initiates in the face and head. The Ohio court held that evidence presented therein was more than sufficient to sustain a conviction.

Excessive intake of alcohol in the fraternity initiations can be considered as hazing. In *Oja v. Grand Chapter of Theta Chi Fraternity Inc.*,[60] a 17-year old college freshman died as a result of aspirating his own vomit after consuming excessive amounts of alcohol in a fraternity initiation ritual. The defendants in the said case contended that they only furnished the alcohol drinks to the victim. The court denied the defense because such acts of the fraternity effectively contributed to the death of the victim as part of their hazing.

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[52] Supra note 43, at 30, citing Marc Edelman, *How to Prevent High School Hazing: A Legal, Ethical and Social Primer*, 81 N. DAK. L. REV. 309 (2005).
[53] ALA CODE § 16-1-23.
[54] Hank Nuwer, *Wrongs of Passage: Fraternities, Sororities, Hazing, and Binge Drinking*, p. 170 (2001).
[55] N.J. STAT. ANN. § 2C:40-3 to § 2C:40-4.
[56] Gregory Parks and Tiffany Southerland, *The Psychology and Law of Hazing Consent*, 97 MARQUETTE L. REV. 13 (2013).
[57] Michelle Finkel, *Traumatic Injuries Caused By Hazing Practices* 20 AM. J. E. M. 232 (2002).
[58] Janis Doleschal, *Legal Strategies to Confront High School Hazing Incidents in the United States*, 2 INTL. SPORTS. LAW. J. 11 (2002).
[59] 90 Ohio App.3d 684 (1993).
[60] 680 N.Y.S.2d 278-79 (1999).

Even in high school, hazing could exist. In *Nice v. Centennial Area School District*,[61] a tenth-grade wrestler at William Tennet High School was subjected to various forms of hazing, including a ritual where the victim was forcibly held down, while a teammate sat on his face with his buttocks exposed. The parents of the student sued the school because it failed to prevent the incident despite its knowledge of the hazing rites. The court approved the settlement of the parties in the amount of US$151,000.00.

More recently, the case of *Yost v. Wabash College*[62] involved the hazing of an 18-year old freshman, who suffered physical and mental injuries in the initiation rites conducted by the Phi Kappa Psi fraternity. As a pledge, the victim was thrown into a creek and was placed in a chokehold, until he lost consciousness. The court upheld that action against the local fraternity because, even if the student consented, the fraternity had the duty to ensure the safety of its activities.

The US anti-hazing laws and jurisprudence show that victims of hazing can properly attain redress before the court. By crafting laws and prosecuting offenders, the state can address the distinct dilemma of hazing.

Anti-Hazing Law in the Philippines

R.A. No. 8049, or the Anti-Hazing Law of 1995, has been enacted to regulate hazing and other forms of initiation rites in fraternities, sororities, and other organizations. It was in response to the rising incidents of death of hazing victims, particularly the death of Leonardo "Lenny" Villa.[63] Despite its passage, reports of deaths resulting from hazing continue to emerge. Recent victims were Guillo Servando of the College of St. Benilde, Marc Andre Marcos and Marvin Reglos of the San Beda College - Manila, and Cris Anthony Mendez of the University of the Philippines - Diliman. With the continuity of these senseless tragedies, one question implores for an answer: is R.A. No. 8049 a sufficient deterrent against hazing?

To answer the question, the Court must dissect the provisions of the law and scrutinize its effect, implication and application.

Criminal law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se*, the intent governs; but in acts

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[61] 98 F.Supp.2d 665 (2000).
[62] 976 N.E.2d 724, 728 (2012).
[63] Sponsorship Speech of former Senator Joey Lina, Senate Transcript of Session Proceedings No. 34 on October 8, 1992 of the 9th Congress, 1st Regular Sess. at 21-22 (Senate TSP No. 34).

mala prohibita, the only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial.[64] When the doing of an act is prohibited by law, it is considered injurious to public welfare, and the doing of the prohibited act is the crime itself.[65]

A common misconception is that all *mala in se* crimes are found in the Revised Penal Code *(RPC)*, while all *mala prohibita* crimes are provided by special penal laws. In reality, however, there may be *mala in se* crimes under special laws, such as plunder under R.A. No. 7080, as amended.[66] Similarly, there may be *mala prohibita* crimes defined in the RPC, such as technical malversation.[67]

The better approach to distinguish between *mala in se* and *mala prohibita* crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime *mala in se;* on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is *mala prohibita*. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute.[68]

The crime of hazing under R.A. No. 8049 is *malum prohibitum.* The Senate deliberations would show that the lawmakers intended the anti-hazing statute to be *malum prohibitum,* as follows:

> SENATOR GUINGONA: Most of these acts, if not all, are already punished under the Revised Penal Code.
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> SENATOR LINA. That is correct, Mr. President.
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> SENATOR GUINGONA. If hazing is done at present and it results in death, the charge would be murder or homicide.
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> SENATOR LINA. That is correct, Mr. President.
>
> SENATOR GUINGONA. If it does not result in death, it may be frustrated homicide or serious physical injuries.
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> SENATOR LINA. That is correct, Mr. President.
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> SENATOR GUINGONA. Or, if the person who commits sexual abuse does so it can be penalized under rape or acts of lasciviousness.

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[64] *Tan v. Ballena*, 579 Phil. 503, 527-528 (2008).
[65] LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW – BOOK ONE 56 (17th ed. 2008)
[66] *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001); see also *Tan v. Ballena*, ibid. and *Garcia v. CA*, 319 Phil. 591 (2008) for more examples of *mala in se* crimes in special laws. July 4, 2008.
[67] Art. 220 of the Revised Penal Code; see *Ysidoro v. People,* G.R. No. 192330, November 14, 2012, 685 SCRA 637.
[68] *Teves v. COMELEC*, 604 Phil. 717, 729 (2009), citing *Dela Torre v. COMELEC,* 327 Phil. 1144, 1150-1151 (1996).

SENATOR LINA. That is correct, Mr. President.

SENATOR GUINGONA. So, what is the rationale for making a new offense under this definition of the crime of hazing?

SENATOR LINA. To discourage persons or group of persons either composing a sorority, fraternity or any association from making this requirement of initiation that has already resulted in these specific acts or results, Mr. President.

That is the main rationale. We want to send a strong signal across the land that no group or association can require the act of physical initiation before a person can become a member without being held criminally liable.

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SENATOR GUINGONA. Yes, but what would be the rationale for that imposition? Because the distinguished Sponsor has said that he is not punishing a mere organization, he is not seeking the punishment of an initiation into a club or organization, he is seeking the punishment of certain acts that resulted in death, etcetera as a result of hazing which are already covered crimes.

The penalty is increased in one, because we would like to discourage hazing, abusive hazing, but it may be a legitimate defense for invoking two or more charges or offenses, because these very same acts are already punishable under the Revised Penal Code.

That is my difficulty, Mr. President.

SENATOR LINA. x x x

Another point, Mr. President, is this, and this is a very telling difference: **When a person or group of persons resort to hazing as a requirement for gaining entry into an organization, the intent to commit a wrong is not visible or is not present, Mr. President. Whereas, in these specific crimes, Mr. President, let us say there is death or there is homicide, mutilation, if one files a case, then the intention to commit a wrong has to be proven. But if the crime of hazing is the basis, what is important is the result from the act of hazing.**

To me, that is the basic difference and that is what will prevent or deter the sororities or fraternities; that they should really shun this activity called "hazing." Because, initially, these fraternities or sororities do not even consider having a neophyte killed or maimed or that acts of lasciviousness are even committed initially, Mr. President.

So, what we want to discourage is the so-called initial innocent act. That is why there is need to institute this kind of hazing. Ganiyan po ang nangyari. Ang fraternity o ang sorority ay magre-recruit. Wala talaga silang intensiyong makamatay. Hindi ko na babanggitin at buhay pa iyong kaso. Pero dito sa anim o pito na

namatay nitong nakaraang taon, walang intensiyong patayin talaga iyong neophyte. So, kung maghihintay pa tayo, na saka lamang natin isasakdal ng murder kung namatay na, ay after the fact ho iyon. Pero, kung sasabihin natin sa mga kabataan na: "Huwag ninyong gagawin iyong hazing. Iyan ay kasalanan at kung mamatay diyan, mataas ang penalty sa inyo."

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SENATOR GUINGONA. I join the lofty motives, Mr. President, of the distinguished Sponsor. But I am again disturbed by his statement that the prosecution does not have to prove the intent that resulted in the death, that resulted in the serious physical injuries, that resulted in the acts of lasciviousness or deranged mind. **We do not have to prove the willful intent of the accused in proving or establishing the crime of hazing.** This seems, to me, a novel situation where we create the special crime without having to go into the intent, which is one of the basic elements of any crime.

If there is no intent, there is no crime. If the intent were merely to initiate, then there is no offense. And even the distinguished Sponsor admits that the organization, the intent to initiate, the intent to have a new society or a new club is, per se, not punishable at all. What are punishable are the acts that lead to the result. But if these results are not going to be proven by intent, but just because there was hazing, I am afraid that it will disturb the basic concepts of the Revised Penal Code, Mr. President.

SENATOR LINA. Mr. President, the act of hazing, precisely, is being criminalized because in the context of what is happening in the sororities and fraternities, when they conduct hazing, no one will admit that their intention is to maim or to kill**.** So, we are already criminalizing the fact of inflicting physical pain. Mr. President, it is a criminal act and we want it stopped, deterred, discouraged.

If that occurs, under this law, there is no necessity to prove that the masters intended to kill or the masters intended to maim. What is important is the result of the act of hazing. Otherwise, the masters or those who inflict the physical pain can easily escape responsibility and say, "We did not have the intention to kill. This is part of our initiation rites. This is normal. We do not have any intention to kill or maim."

This is the lusot, Mr. President. They might as well have been charged therefore with the ordinary crime of homicide, mutilation, etcetera, where the prosecution will have a difficulty proving the elements if they are separate offenses.

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SENATOR LINA. x x x

I am very happy that the distinguished Minority Leader brought out the idea of intent or whether it is *mala in se* or *mala*

> *prohibita.* There can be a radical amendment if that is the point that he wants to go to.
>
> **If we agree on the concept, then, maybe, we can just make this a special law on hazing. We will not include this anymore under the Revised Penal Code.** That is a possibility. I will not foreclose that suggestion, Mr. President.[69]
>
> [Emphases Supplied]

Having in mind the potential conflict between the proposed law and the core principle of *mala in se* adhered to under the RPC, the Congress did not simply enact an amendment thereto. Instead, it created a special law on hazing, founded upon the principle of *mala prohibita.*[70] In *Vedaña v. Valencia,*[71] the Court noted that in our nation's very recent history, the people had spoken, through the Congress, to deem conduct constitutive of hazing, an act previously considered harmless by custom, as criminal.[72] The act of hazing itself is not inherently immoral, but the law deems the same to be against public policy and must be prohibited. Accordingly, the existence of criminal intent is immaterial in the crime of hazing. Also, the defense of good faith cannot be raised in its prosecution.[73]

Section 1 of R.A. No. 8049 defines hazing as an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and other similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury. From the said definition, the elements of the crime of hazing can be determined:

> 1. That there is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization;
>
> 2. That there must be a recruit, neophyte or applicant of the fraternity, sorority or organization; and
>
> *3.* That the recruit, neophyte or applicant is placed in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and other similar tasks or activities or otherwise subjecting him to *physical or psychological suffering or injury*.

From the said definition of hazing, it is apparent that there must be an initiation rite or practice performed by the fraternities, sororities or

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[69] Senate TSP No. 47, supra note 63.
[70] *Villareal v. People*, supra note 38, at 590.
[71] *Vedaña v. Valencia*, 356 Phil. 317, 332 (1998).
[72] *Villareal v. People*, supra note 38, at 591.
[73] See *People v. Beriarmente*, 418 Phil. 229 (2001).

organization. The law, however, did not limit the definition of these groups to those formed within academic colleges and universities.[74] In fact, the second paragraph of Section 1 provides that the term "organization" shall include any **club** or the Armed Forces of the Philippines *(AFP)*, Philippine National Police *(PNP)*, Philippine Military Academy *(PMA)*, or officer and cadet corp of the Citizen's Military Training and Citizen's Army Training. Even the president, manager, director or other responsible officer of a corporation engaged in hazing as a requirement for employment are covered by the law.[75]

R.A. No. 8049 qualifies that the physical, mental and psychological testing and training procedure and practices to determine and enhance the physical, mental and psychological fitness of prospective regular members of the AFP and the PNP, as approved by the Secretary of National Defense and the National Police Commission, duly recommended by the Chief of Staff of the AFP and the Director General of the PNP, shall not be considered as hazing.

And not all forms of initiation rites are prohibited by the law. Section 2 thereof provides that initiation rites of fraternities, sororities or organizations shall be allowed provided that the following requisites are met:

> 1. That the fraternity, sorority or organization has a prior written notice to the school authorities or head of organization;
>
> 2. The said written notice must be secured at least seven (7) days before the conduct of such initiation;
>
> 3. That the written notice shall indicate:
>
>> a. The period of the initiation activities, which shall not exceed three (3) days;
>>
>> b. The names of those to be subjected to such activities; and
>>
>> **c. An undertaking that no physical violence be employed by anybody during such initiation rites.**

Section 3 of R.A. No. 8049 imposes an obligation to the head of the school or organization or their representatives that they must assign at least two (2) representatives, as the case may be, to be present during these valid initiations. The duty of such representative is to see to it that no physical harm of any kind shall be inflicted upon a recruit, neophyte or applicant.

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[74] See *People v. Bayabas*, G.R. No. 174786, February 18, 2015, where the Court discussed that the term "organization" under R.A. No. 8049 is not limited to fraternities, sororities, educational institutions, corporations, PNP and AFP.

[75] Par. 8, Section 4, R.A. 8049.

Noticeably, the law does not provide a penalty or sanction to fraternities, sororities or organizations that fail to comply with the notice requirements of Section 2. Also, the school and organization administrators do not have a clear liability for non-compliance with Section 3.

Any person who commits the crime of hazing shall be liable in accordance with Section 4 of the law, which provides different classes of persons who are held liable as principals and accomplices.

The first class of principals would be the actual participants in the hazing. If the person subjected to hazing or other forms of initiation rites suffers any physical injury or dies as a result thereof, the officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm shall be liable as principals. Interestingly, the presence of any person during the hazing is *prima facie* evidence of actual participation, unless he prevented the commission of the acts punishable herein.[76]

The prescribed penalty on the principals depends on the extent of injury inflicted to the victim.[77] The penalties appear to be similar to that of homicide, serious physical injuries, less serious physical injuries, and slight physical injuries under the RPC,[78] with the penalties for hazing increased

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[76] Par. 6, Sec. 4, R.A. 8049.

[77] Par. 1, Sec.4 of R.A. 8049 prescribe the following penalties:

1. The penalty of reclusion perpetua (life imprisonment) if death, rape, sodomy or mutilation results there from.
2. The penalty of reclusion temporal in its maximum period (17 years, 4 months and 1 day to 20 years) if in consequence of the hazing the victim shall become insane, imbecile, impotent or blind.
3. The penalty of reclusion temporal in its medium period (14 years, 8 months and one day to 17 years and 4 months) if in consequence of the hazing the victim shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm or a leg or shall have lost the use of any such member shall have become incapacitated for the activity or work in which he was habitually engaged.
4. The penalty of reclusion temporal in its minimum period (12 years and one day to 14 years and 8 months) if in consequence of the hazing the victim shall become deformed or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of more than ninety (90) days.
5. The penalty of prison mayor in its maximum period (10 years and one day to 12 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of more than thirty (30) days.
6. The penalty of prison mayor in its medium period (8 years and one day to 10 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of ten (10) days or more, or that the injury sustained shall require medical assistance for the same period.
7. The penalty of prison mayor in its minimum period (6 years and one day to 8 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged from one (1) to nine (9) days, or that the injury sustained shall require medical assistance for the same period.
8. The penalty of prison correccional in its maximum period (4 years, 2 months and one day to 6 years) if in consequence of the hazing the victim sustained physical injuries which do not prevent him from engaging in his habitual activity or work nor require medical attendance.

[78] Art. 249, 263, 265 and 266 of the Revised Penal Code.

one degree higher. Also, the law provides several circumstances which would aggravate the imposable penalty.[79]

Curiously, although hazing has been defined as consisting of those activities involving physical or psychological suffering or injury, the penalties for hazing only covered the infliction of physical harm. At best, the only psychological injury recognized would be causing insanity to the victim. Conversely, even if the victim only sustained physical injuries which did not incapacitate him, there is still a prescribed penalty.[80]

The second class of principals would be the officers, former officers, or alumni of the organization, group, fraternity or sorority who actually planned the hazing.[81] Although these planners were not present when the acts constituting hazing were committed, they shall still be liable as principals. The provision took in consideration the non-resident members of the organization, such as their former officers or alumni.

The third class of principals would be officers or members of an organization group, fraternity or sorority who knowingly cooperated in carrying out the hazing by inducing the victim to be present thereat.[82] These officers or members are penalized, not because of their direct participation in the infliction of harm, but due to their indispensable cooperation in the crime by inducing the victim to attend the hazing.

The next class of principals would be the fraternity or sorority's adviser who was present when the acts constituting hazing were committed, and failed to take action to prevent them from occurring.[83] The liability of the adviser arises, not only from his mere presence in the hazing, but also his failure to prevent the same.

The last class of principals would be the parents of the officers or members of the fraternity, group, or organization.[84] The hazing must be held in the home of one of the officers or members. The parents must have actual

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[79] Sec. 4 – xxx
The maximum penalty herein provided shall be imposed in any of the following instances:
(a) when the recruitment is accompanied by force, violence, threat, intimidation or deceit on the person of the recruit who refuses to join;
(b) when the recruit, neophyte or applicant initially consents to join but upon learning that hazing will be committed on his person, is prevented from quitting;
(c) when the recruit, neophyte or applicant having undergone hazing is prevented from reporting the unlawful act to his parents or guardians, to the proper school authorities, or to the police authorities, through force, violence, threat or intimidation;
(d) when the hazing is committed outside of the school or institution; or
(e) when the victim is below twelve (12) years of age at the time of the hazing.
[80] Par. 1 (8), Section 4, R.A. 8049.
[81] Par. 5, Sec.4, R.A. 8049.
[82] Id.
[83] Id.
[84] Par. 3, Sec.4, R.A. 8049.

knowledge of the hazing conducted in their homes and failed to take any action to avoid the same from occurring.

The law also provides for accomplices in the crime of hazing. The school authorities, including faculty members, who consented to the hazing or who have actual knowledge thereof, but failed to take any action to prevent the same from occurring shall be punished as accomplices.[85] Likewise, the owner of the place where the hazing was conducted can also be an accomplice to the crime.[86] The owner of the place shall be liable when he has actual knowledge of the hazing conducted therein and he failed to take any steps to stop the same.

Recognizing the *malum prohibitum* characteristic of hazing, the law provides that any person charged with the said crime shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.[87] Also, the framers of the law intended that the consent of the victim shall not be a defense in hazing. During the discussion of whether sodomy shall be included as a punishable act under the law, the issue of consent was tackled:

> SENATOR LINA. x x x
>
> But sodomy in this case is connected with hazing, Mr. President. Such that the act may even be entered into with consent. It is not only sodomy. The infliction of pain may be done with the consent of the neophyte. If the law is passed, that does not make the act of hazing not punishable because the neophyte accepted the infliction of pain upon himself.
>
> If the victim suffers from serious physical injuries, but the initiator said, "Well, he allowed it upon himself. He consented to it." So, if we allow that reasoning that sodomy was done with the consent of the victim, then we would not have passed any law at all. There will be no significance if we pass this bill, because it will always be a defense that the victim allowed the infliction of pain or suffering. He accepted it as part of the initiation rites.
>
> But precisely, Mr. President that is one thing that we would want to prohibit. **That the defense of consent will not apply because the very act of inflicting physical pain or psychological suffering is, by itself, a punishable act. The result of the act of hazing, like death or physical injuries merely aggravates the act with higher penalties. But the defense of consent is not going to nullify the criminal nature of the act.**
>
> So, if we accept the amendment that sodomy can only aggravate the offense if it is committed without consent of the victim, then the whole foundation of this proposed law will collapse.

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[85] Par. 4, Sec.4, R.A. 8049.
[86] Par. 3, Sec.4, R.A. 8049.
[87] Par. 7, Sec.4, R.A. 8049.

SENATOR BIAZON. Thank you, Mr. President.

SENATOR LINA. Thank you very much.

THE PRESIDENT. Is there any objection to the committee amendment? (Silence.) The Chair hears none; the same is approved.[88]

[Emphasis supplied]

Further, the law acknowledges that the offended party in the crime of hazing can seek different courses of action. It provides that the responsible officials of the school or of the police, military or citizen's army training organization, may impose the appropriate administrative sanctions on the person or the persons charged under this provision even before their conviction.[89] Necessarily, the offended party can file either administrative, civil, or criminal actions against the offenders.[90]

The study of the provisions of R.A. No. 8049 shows that, on paper, it is complete and robust in penalizing the crime of hazing. It was made *malum prohibitum* to discount criminal intent and disallow the defense of good faith. It took into consideration the different participants and contributors in the hazing activities. While not all acts cited in the law are penalized, the penalties imposed therein involve various and serious terms of imprisonment to discourage would-be offenders. Indeed, the law against hazing is ideal and profound. As to whether the law can be effectively implemented, the Court begs to continue on the merits of the case.

The Information properly charged the offense proved

The petitioners claim that the amended information avers a criminal charge of hazing by actual participation, but the only offense proved during the trial was hazing by inducement. Their contention must fail. The Amended Information reads:

That on or about 2:30 in the early morning of January 14, 2006, at Villa Novaliches, Brgy. Pansol, Calamba City, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused, during a planned initiation rite and being then officers and members of Alpha Phi Omega fraternity and present thereat, in conspiracy with more or less twenty other members and officers, whose identity is not yet known, did then and there willfully, unlawfully and feloniously assault and use personal violence upon one MARLON VILLANUEVA y MEJILLA, a neophyte thereof and as

[88] Senate TSP No. 62, supra note 63, at 13-15.
[89] Par. 2, Sec.4, R.A. 8049
[90] See *Ateneo De Manila University v. Capulong*, G.R. No. 99327, May 27, 1993, 222 SCRA 644, 656, where it was stated that an administrative proceeding conducted to investigate students' participation in a hazing activity need not be clothed with the attributes of a judicial proceeding.

> condition for his admission to the fraternity, thereby subjecting him to physical harm, resulting to his death, to the damage and prejudice of the heirs of the victim.
>
> CONTRARY TO LAW.[91]

On the manner of how the Information should be worded, Section 9, Rule 110 of the Rules of Court, is enlightening:

> Section 9. Cause of the accusation. The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is evident that the Information need not use the exact language of the statute in alleging the acts or omissions complained of as constituting the offense. The test is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly.[92]

The Court agrees with the OSG that the "planned initiation rite" as stated in the information included the act of inducing Villanueva to attend it. In ordinary parlance, a planned event can be understood to have different phases. Likewise, the hazing activity had different stages and the perpetrators had different roles therein, not solely inflicting physical injury to the neophyte. One of the roles of the petitioners in the hazing activity was to induce Villanueva to be present. Dungo and Sibal not only induced Villanueva to be present at the resort, but they actually brought him there. They fulfilled their roles in the planned hazing rite which eventually led to the death of Villanueva. The hazing would not have been accomplished were it not for the acts of the petitioners that induced the victim to be present.

Secrecy and silence are common characterizations of the dynamics of hazing.[93] To require the prosecutor to indicate every step of the planned initiation rite in the information at the inception of the criminal case, when details of the clandestine hazing are almost nil, would be an arduous task, if not downright impossible. The law does not require the impossible (*lex non cognit ad impossibilia*).

The proper approach would be to require the prosecution to state every element of the crime of hazing, the offenders, and the accompanying circumstances in the planned initiation activity, which has been satisfied in

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[91] Id. at 49.
[92] *People v. Puig*, 585 Phil. 555, 562 (2008), citing *People v. Lab-eo*, 424 Phil. 482, 495 (2002).
[93] Elizabeth J. Allan & Mary Madden, Hazing in View: College Students at Risk, NATIONAL STUDY OF STUDENT HAZING, p. 24 (2008).

the present case. Accordingly, the amended information sufficiently informed the petitioners that they were being criminally charged for their roles in the planned initiation rite.

Conspiracy of the offenders was duly proven

The petitioners assail that the prosecution failed to establish the fact of conspiracy.

The Court disagrees.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To determine conspiracy, there must be a common design to commit a felony.[94] The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself or may consist of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.[95]

In conspiracy, it need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole.[96] Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.[97]

The lawmakers deliberated on whether the prosecution was still obliged to prove the conspiracy between the offenders under R.A. 8049, to wit:

> SENATOR GUINGONA. Mr. President, assuming there was a group that initiated and a person died. The charge is murder. My question is: Under this bill if it becomes a law, would the prosecution have to prove conspiracy or not anymore?
>
> SENATOR LINA. Mr. President, if the person is present during hazing x x x

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[94] *Rivera v. People*, G.R. No. 156577, December 03, 2014.
[95] *People v. Caballero*, 448 Phil. 514, 528-529 (2003).
[96] *People v. Morilla*, G.R. No. 189833, February 5, 2014, 715 SCRA 452, 461.
[97] *People v. Collado*, G.R. No. 185719, June 17, 2013, 698 SCRA 628, 650.

> SENATOR GUINGONA. The persons are present. First, would the prosecution have to prove conspiracy? Second, would the prosecution have to prove intent to kill or not?
>
> SENATOR LINA. No more. As to the second question, Mr. President, if that occurs, there is no need to prove intent to kill.
>
> SENATOR GUINGONA. But the charge is murder.
>
> SENATOR LINA. That is why I said that it should not be murder. It should be hazing, Mr. President.[98]

The Court does not categorically agree that, under R.A. No. 8049, the prosecution need not prove conspiracy. Jurisprudence dictates that conspiracy must be established, not by conjectures, but by positive and conclusive evidence. Conspiracy transcends mere companionship and mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge, acquiescence in or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.[99]

R.A. No. 8049, nevertheless, presents a novel provision that introduces a disputable presumption of actual participation; and which modifies the concept of conspiracy. Section 4, paragraph 6 thereof provides that the presence of any person during the hazing is *prima facie* evidence of participation as principal, unless he prevented the commission of the punishable acts. This provision is unique because a disputable presumption arises from the mere presence of the offender during the hazing, which can be rebutted by proving that the accused took steps to prevent the commission of the hazing.

The petitioners attempted to attack the constitutionality of Section 4 of R.A. No. 8049 before the CA, but did not succeed. "[A] finding of *prima facie* evidence x x x does not shatter the presumptive innocence the accused enjoys because, before *prima facie* evidence arises, certain facts have still to be proved; the trial court cannot depend alone on such evidence, because precisely, it is merely *prima facie.* It must still satisfy that the accused is guilty beyond reasonable doubt of the offense charged. Neither can it rely on the weak defense the latter may adduce."[100]

Penal laws which feature *prima facie* evidence by disputable presumptions against the offenders are not new, and can be observed in the following: (1) the possession of drug paraphernalia gives rise to *prima facie*

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[98] Senate TSP No. 47, supra note 63.
[99] *Ladonga v. People*, 414 Phil. 86, 101 (2005).
[100] *Agullo v. Sandiganbayan*, 414 Phil. 86, 101 (2001).

evidence of the use of dangerous drug;[101] (2) the dishonor of the check for insufficient funds is *prima facie* evidence of knowledge of such insufficiency of funds or credit;[102] and (3) the possession of any good which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.[103]

Verily, the disputable presumption under R.A. No. 8049 can be related to the conspiracy in the crime of hazing. The common design of offenders is to haze the victim. Some of the overt acts that could be committed by the offenders would be to (1) plan the hazing activity as a requirement of the victim's initiation to the fraternity; (2) induce the victim to attend the hazing; and (3) actually participate in the infliction of physical injuries.

In this case, there was *prima facie* evidence of the petitioners' participation in the hazing because of their presence in the venue. As correctly held by the RTC, the presence of Dungo and Sibal during the hazing at Villa Novaliches Resort was established by the testimony of Ignacio. She testified that she saw Sibal emerge from the resort and approach her store, to wit:

> MR. DIMACULANGAN
>
> Q: And how many persons from this group did you see again?
>
> WITNESS
>
> A: Three (3), sir.
>
> Q: Where did they come from, did they come out from the resort? Where did this 3 people or this group of people coming from?
>
> A: Inside the resort, sir.
>
> Q: And around what time was this?
>
> A: Around 9:00, sir.
>
> Q: And what did they do if any if they came out of the resort?
>
> A: They went to my store, sir.
>
> x x x x
>
> Q: Did you have any other visitors to your store that night?
>
> x x x x

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[101] Sec. 12, R.A. 9165, as amended.
[102] Sec. 2, B.P. 22.
[103] Sec. 5, P.D. 1612.

A: "Meron po".

Q: Who were these visitors?

A: I don't know their names but I recognize their faces, sir.

Q: If I show you pictures of these people, will you be able to identify them before this Court.

A: Yes, sir.

x x x x

Q: Mrs. Ignacio, I am showing you this picture of persons marked as Exhibit "L" in the Pre-Trial, can you please look over this document carefully and see if any of the persons whom you said visited your store is here?

x x x x

A: "Siya rin po."

COURT:

Make it of record that the witness pinpointed to the first picture appearing on the left picture on the first row.

x x x x

ATTY. PAMAOS:

For the record, your Honor, we manifest that the picture and the name pointed by the witness has been previously marked as Exhibit "L-3" and previously admitted by the defense as referring to Gregorio Sibal, Jr., accused in this case...[104]

Ignacio, also positively identified Dungo as among the guests of Villa Novaliches Resort on the night of the hazing, to wit:

COURT

Q: x x x Now, when you say other people you could identify who are not in the pictures then how would you know that these people are indeed those people you could identify?

WITNESS

A: "Iyon pong...di ba po nagkuwento ako na dumating sila tapos nag shake hands at saka iyong nagyakapan po..."

Q: And what will be the significance of the alleged embrace and shake hands for you to say that you could identify those people?

[104] TSN Vol. I, June 28, 2006, p. 23-31.

A: "Hindi po. Noong dumating po sila nasa isang jeep, meron pong lalaki doon sa may tabi ng driver bumaba siya tapos po noong bumaba siya tapos iyong mga kasamahan nya sa likod nagbaba-an din, iyon po nagbati-an po sila."

Q: And from these greeting, how could you identify these people?

A: "Ngayon ko lang po napag masdan ang taong iyon, hindi ko po alam na akusado po sa kabila iyon."

Q: And who was that person?

A: "Siya po, iyon po."

Q: Who are you pointing to?

A: "Iyon pong naka-dilaw na..." (Witness pointing to Dandy Dungo)

Q: So, are you telling the Court that this person you positively saw seated beside the driver came out and subsequently embraced and shook hands with the other people from the jeepney, is that your testimony?

A: Yes, your Honor.[105]

The testimony of Ignacio was direct and straightforward. Her testimony was given great weight because she was a disinterested and credible witness. The prosecution indubitably established the presence of Dungo and Sibal during the hazing. Such gave rise to the *prima facie* evidence of their actual participation in the hazing of Villanueva. They were given an opportunity to rebut and overcome the *prima facie* evidence of the prosecution by proving that they prevented the commission of the hazing, yet they failed to do so.

Because of the uncontroverted *prima facie* evidence against the petitioners, it was shown that they performed an overt act in the furtherance of the criminal design of hazing. Not only did they induce the victim to attend the hazing activity, the petitioners also actually participated in it based on the *prima facie* evidence. These acts are sufficient to establish their roles in the conspiracy of hazing.

Hence, generally, mere presence at the scene of the crime does not in itself amount to conspiracy.[106] Exceptionally, under R.A. No. 8049, the participation of the offenders in the criminal conspiracy can be proven by the *prima facie* evidence due to their presence during the hazing, unless they prevented the commission of the acts therein.

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[105] Id. at 89-90.
[106] *People v. Labagala*, 640 Phil. 311 (2010).

The guilt of the petitioners was proven beyond reasonable doubt

Aside from inducing Villanueva to attend the initiation rites and their presence during the hazing, the petitioners' guilt was proven beyond reasonable doubt by the sequence of circumstantial evidence presented by the prosecution. Their involvement in the hazing of Villanueva is not merely based on *prima facie* evidence but was also established by circumstantial evidence.

In considering a criminal case, it is critical to start with the law's own starting perspective on the status of the accused – in all criminal prosecutions, he is presumed innocent of the charge laid unless the contrary is proven beyond reasonable doubt.[107] In criminal law, proof beyond reasonable doubt does not mean such degree of proof that produces absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[108]

While it is established that nothing less than proof beyond reasonable doubt is required for a conviction, this exacting standard does not preclude resort to circumstantial evidence when direct evidence is not available. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Crimes are usually committed in secret and under conditions where concealment is highly probable. If direct evidence is insisted on under all circumstances, the prosecution of vicious felons who commit heinous crimes in secret or secluded places will be hard, if not impossible, to prove.[109]

Needless to state, the crime of hazing is shrouded in secrecy. Fraternities and sororities, especially the Greek organizations, are secretive in nature and their members are reluctant to give any information regarding initiation rites.[110] The silence is only broken after someone has been injured so severely that medical attention is required. It is only at this point that the secret is revealed and the activities become public.[111] Bearing in mind the concealment of hazing, it is only logical and proper for the prosecution to resort to the presentation of circumstantial evidence to prove it.

The rules on evidence and precedents to sustain the conviction of an accused through circumstantial evidence require the existence of the

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[107] *People v. Capuno*, 635 Phil. 226, 236 (2011).
[108] *People v. Javier*, 659 Phil. 653, 657 (2008).
[109] *People v. Sace*, 631Phil. 335, 343 (2010).
[110] Stephen Sweet, *Understanding Fraternity Hazing*, THE HAZING READER 2 (2004).
[111] Supra note 43, at 14.

following requisites: (1) there are more than one circumstance; (2) the inference must be based on proven facts; and (3) the combination of all circumstances produces a conviction beyond reasonable doubt of the guilt of the accused.[112] To justify a conviction upon circumstantial evidence, the combination of circumstances must be such as to leave no reasonable doubt in the mind as to the criminal liability of the accused. Jurisprudence requires that the circumstances must be established to form an unbroken chain of events leading to one fair reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.[113]

The CA meticulously wrote in detail the unbroken chain of circumstantial evidence which established the petitioners' guilt in the death of Villanueva as follows:

> 1. Marlon Villanueva is a neophyte of Alpha Phi Omega, as testified by his roommate Joey Atienza.
>
> 2. At around 3:00 o'clock in the afternoon of January 13, 2006, Sunga was staying at their *tambayan*, talking to her organization mates. Three men were seated two meters way from her. She identified two of the men as appellants Sibal and Dungo, while she did not know the third man. The three men were wearing black shirts with the seal of the Alpha Phi Omega.
>
> 3. Later at 5:00 o'clock in the afternoon, two more men coming from the entomology wing arrived and approached the three men. Among the men who just arrived was the victim, Marlon Villanueva. One of the men wearing black APO shirts handed over to the two fraternity neophytes some money and told the men "Mamalengke na kayo." He later took back the money and said, "Huwag na, kami na lang."
>
> 4. One of the men wearing a black APO shirt, who was later identified as appellant Dungo, stood up and asked Marlon if the latter already reported to him, and asked him why he did not report to him when he was just at the *tambayan*. Dungo then continuously punched the victim on his arm. This went on for five minutes. Marlon just kept quiet with his head bowed down. Fifteen minutes later, the men left going towards the Entomology wing.
>
> 5. The deceased Marlon Villanueva was last seen alive by Joey Atienza at 7:00 in the evening of 13 January 2006, from whom he borrowed the shoes he wore at the initiation right *[sic]*. Marlon told Joey that it was his "finals" night.

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[112] Sec.4, Rule 133, Rules of Court.
[113] *People v. Sevellino,* 469 Phil. 209, 220 (2004).

6. On January 13, 2006 at around 8:30 to 9:00 o'clock in the evening, Susan Ignacio saw more than twenty (20) persons arrive at the Villa Novaliches Resort onboard a jeepney. She estimated the ages of these persons to be between 20 to 30 years old. Three (3) persons riding a single motorcycle likewise arrived at the resort.

7. Ignacio saw about fifteen (15) persons gather on top of the terrace at the resort who looked like they were praying. Later that evening, at least three (3) of these persons went to her store to buy some items. She did not know their names but could identity *[sic]* their faces. After she was shown colored photographs, she pointed to the man later identified as Herald Christopher Braseros. She also pointed out the man later identified as Gregorio Sibal, Jr.

8. Donato Magat, a tricycle driver plying the route of Pansol, Calamba City, testified that around 3:00 o'clock in the morning of January 14, 2006, he was waiting for passengers at the corner of Villa Novaliches Resort when a man approached him and told him that someone inside the resort needed a ride. Magat then went to the resort and asked the two (2) men standing by the gate who will be riding his tricycle.

9. The four (4) men boarded his tricycle but Magat noticed that when he touched the body of the man who was being carried, it felt cold. The said man looked very weak like a vegetable.

10. Seferino Espina y Jabay testified that he worked as a security guard at the J.P. Rizal Hospital and was assigned at the emergency room. At around 3:00 o'clock in the early morning of January 14, 2006, he was with another security guard, Abelardo Natividad and hospital helper Danilo Glindo a.k.a. Gringo, when a tricycle arrived at the emergency room containing four (4) passengers, excluding the driver. He was an arm's length away from said tricycle. He identified two of the passengers thereof as appellants Dungo and Sibal. Espina said he and Glindo helped the passengers unload a body inside the tricycle and brought it to the emergency room.

11. Afterwards, Espina asked the two men for identification cards. The latter replied that they did not bring with them any I.D. or wallet. Instead of giving their true names, the appellants listed down their names in the hospital logbook as Brandon Gonzales y Lanzon and Jericho Paril y Rivera. Espina then told the two men not to leave, not telling them that they secretly called the police to report the incident which was their standard operating procedure when a dead body was brought to the hospital.

12. Dr. Ramon Masilungan, who was then the attending physician at the emergency room, observed that Marlon was motionless, had no heartbeat and already cyanotic.

13. Dr. Masilungan tried to revive Marlon for about 15 to 20 minutes. However, the latter did not respond to resuscitation and was pronounced dead. Dr. Masilungan noticed a big contusion hematoma on the left side of the victim's face and several injuries on his arms and legs. He further attested that Marlon's face was already cyanotic.

14. When Dr. Masilungan pulled down Marlon's pants, he saw a large contusion on both legs which extended from the upper portion of his thigh down to the couplexial portion or the back of the knee.

15. Due to the nature, extent and location of Marlon's injuries, Dr. Masilungan opined that he was a victim of hazing. Dr. Masilungan is familiar with hazing injuries, having undergone hazing when he was a student and also because of his experience treating victims of hazing incidents.

16. Dr. Roy Camarillo, Medico-Legal Officer of the PNP Crime Laboratory in Region IV, Camp Vicente Lim, Canlubang, Calamba City, testified that he performed an autopsy on the cadaver of the victim on January 14, 2006; that the victim's cause of death was blunt head trauma. From 1999 to 2006, he was able to conduct post-mortem examination of the two (2) persons whose deaths were attributed to hazing. These two (2) persons sustained multiple contusions and injuries on different parts of their body, particularly on the buttocks, on both upper and lower extremities. Both persons died of brain hemorrhage. Correlating these two cases to the injuries found on the victim's body, Dr. Camarillo attested that the victim, Marlon Villanueva, sustained similar injuries to those two (2) persons. Based on the presence of multiple injuries and contusions on his body, he opined that these injuries were hazing-related.[114]

Petitioners Dungo and Sibal, on the other hand, presented the defense of denial and alibi. These defenses, however, must fail. Time and time again, this Court has ruled that denial and alibi are the weakest of all defenses, because they are easy to concoct and fabricate.[115] As properly held by the RTC, these defenses cannot prevail over the positive and unequivocal identification of the petitioners by prosecution witnesses Sunga and Ignacio. The testimonies of the defense witnesses also lacked credibility and reliability. The corroboration of defense witness Rivera was suspect because she was the girlfriend of Dungo, and it was only logical and emotional that she would stand by the man she loved and cared for. The testimonies of their fellow fraternity brothers, likewise, do not hold much weight because they had so much at stake in the outcome of the case. Stated differently, the petitioners did not present credible and disinterested witnesses to substantiate their defenses of denial and alibi.

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[114] *Rollo*, pp. 81-84.
[115] *People v. Ayade*, 624 Phil. 237, 245 (2010).

After a careful review of the records, the Court agrees with the CA and the RTC that the circumstantial evidence presented by the prosecution was overwhelming enough to establish the guilt of the petitioners beyond a reasonable doubt. The unbroken chain of events laid down by the CA leaves us no other conclusion other than the petitioners' participation in the hazing. They took part in the hazing and, together with their fellow fraternity officers and members, inflicted physical injuries to Villanueva as a requirement of his initiation to the fraternity. The physical injuries eventually took a toll on the body of the victim, which led to his death. Another young life lost.

With the fact of hazing, the identity of the petitioners, and their participation therein duly proven, the moral certainty that produces conviction in an unprejudiced mind has been satisfied.

Final Note

Hazing has been a phenomenon that has beleaguered the country's educational institutions and communities. News of young men beaten to death as part of fraternities' violent initiation rites supposedly to seal fraternal bond has sent disturbing waves to lawmakers. Hence, R.A. No. 8049 was signed into to law on June 7, 1995. Doubts on the effectiveness of the law were raised. The Court, however, scrutinized its provisions and it is convinced that the law is rigorous in penalizing the crime of hazing.

Hopefully, the present case will serve as a guide to the bench and the bar on the application of R.A. No. 8049. Through careful case-build up and proper presentation of evidence before the court, it is not impossible for the exalted constitutional presumption of innocence of the accused to be overcome and his guilt for the crime of hazing be proven beyond reasonable doubt. The prosecution must bear in mind the secretive nature of hazing, and carefully weave its chain of circumstantial evidence. Likewise, the defense must present a genuine defense and substantiate the same through credible and reliable witnesses. The counsels of both parties must also consider hazing as a *malum prohibitum* crime and the law's distinctive provisions.

While the Court finds R.A. No. 8049 adequate to deter and prosecute hazing, the law is far from perfect. In *Villareal v. People,*[116] the Court suggested that the fact of intoxication and the presence of non-resident or alumni fraternity members during hazing should be considered as

[116] *Villareal v. People*, supra note 38, at 559.

aggravating circumstances that would increase the applicable penalties. Equally, based on the discussion earlier, this Court suggests some further amendments to the law. *First,* there should be a penalty or liability for non-compliance with Section 2, or the written notice requirement, and with Section 3, or the representation requirement. *Second,* the penalties under Section 4 should also consider the psychological harm done to the victim of hazing. With these additional inputs on R.A. No. 8049, the movement against hazing can be invigorated.

R.A. No. 8049 is a democratic response to the uproar against hazing. It demonstrates that there must, and should, be another way of fostering brotherhood, other than through the culture of violence and suffering. The senseless deaths of these young men shall never be forgotten, for justice is the spark that lights the candles of their graves.

WHEREFORE, the petition is **DENIED.** The April 26, 2013 Decision and the October 8, 2013 Resolution of the Court of Appeals in CA-G.R. CR-H.C. No. 05046 are hereby **AFFIRMED** in *toto*.

Let copies of this Decision be furnished to the Secretary of the Department of Justice as guidance for the proper implementation and prosecution of violators of R.A. No. 8049; and to the Senate President and the Speaker of the House of Representatives for possible consideration of the amendment of the Anti-Hazing Law to include the penalty for non-compliance with its Section 2 and 3, and the penalty for the psychological harms to the surviving victims of hazing.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice