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On the other hand, the laceration in her hymen is telling and irrefutable, the best physical evidence of her forcible defloration.

We are satisfied with the trial court that the appellant raped Rosalie Maat on August 2, 1990, employing not only physical force and intimidation but also his moral ascendancy over the 12-year old girl. Considering her relationship with him and her tender age, we shall agree to the increase of the usual civil indemnity of ₱30,000.00 to ₱50,000.00.

Already execrable *per se*, rape becomes more obnoxious when committed against a child, as in this case. Lechery is compounded by heartlessness, for the victim is a defenseless innocent who will forever be deprived of the pride of virginity when she surrenders herself to the man she loves. Somehow, that moment will be marred by bitter memories of her violation, if not as well by a tinge of suspicion of an earlier romance.

WHEREFORE, the appeal is *DISMISSED* and the challenged decision is *AFFIRMED in toto*, with costs against the appellant. It is so ordered.

Davide, Jr., Bellosillo, Quiason, and *Kapunan, JJ.*, concur.

THIRD DIVISION

[G.R. No. 104786. January 27, 1994]

ALFREDO PATALINGHUG, *petitioner, vs.* **HON. COURT OF APPEALS, RICARDO CRIBILLO, MARTIN ARAPOL, CORAZON ALCASID, PRIMITIVA SEDO,** *respondents*.

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SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.—** We reverse the Appellate Court and reinstate the ruling of the lower court that petitioner did not violate Section 8 of Davao City Ordinance No. 363. It must be emphasized that the question of whether Mr. Tepoot's building is residential or not is a factual determination which we should not disturb. As we have repeatedly enunciated, the resolution of factual issues is the function of the lower courts where findings on these matters are received with respect and are in fact binding on this court, except only where the case is shown as coming under the accepted exceptions.

2. **POLITICAL LAW; LOCAL GOVERNMENT; ORDINANCE; IN DETERMINING THE NATURE OF THE PROPERTY WHETHER RESIDENTIAL OR COMMERCIAL, THE ZONING ORDINANCE PREVAILS OVER THE TAX DECLARATION; CASE AT BAR.—** It is our considered view, however, that a tax declaration is not conclusive of the nature of the property for zoning purposes. A property may have been declared by its owner as residential for real estate taxation purposes but it may well be within a commercial zone. A discrepancy may thus exist in the determination of the nature of property for real estate taxation purposes *vis-a-vis* the determination of a property for zoning purposes. Needless to say, even if we are to examine the evidentiary value of a tax declaration under the Real Property Tax Code, a tax declaration only enables the assessor to identify the same for assessment levels. In fact, a tax declaration does not bind a provincial/ city assessor, for under Sec. 22 of the Real Estate Tax Code,9 appraisal and assessment are based on the actual use irrespective of "any previous assessment or taxpayer's valuation thereon," which is based on a taxpayer's declaration. In fact, a piece of land declared by a taxpayer as residential may be assessed by the provincial or city assessor as commercial because its actual use is commercial. The trial court's determination that Mr. Tepoot's building is commercial and, therefore, Sec. 8 is inapplicable, is strengthened by the fact that the Sangguniang Panlungsod has declared the questioned area as commercial or C-2. Consequently, even if Tepoot's building was declared for taxation purposes as residential, once a local government

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has reclassified an area as commercial, that determination for zoning purposes must prevail. While the commercial character of the questioned vicinity has been declared thru the ordinance, private respondents have failed to present convincing arguments to substantiate their claim that Cabaguio Avenue, where the funeral parlor was constructed, was still a residential zone. Unquestionably, the operation of a funeral parlor constitutes a "commercial purpose," as gleaned from Ordinance No. 363.

3. ID.; ID.; ID.; DECLARATION OF AN AREA AS A COMMERCIAL ZONE THRU A MUNICIPAL ORDINANCE IS AN EXERCISE OF POLICE POWER.— The declaration of the said area as a commercial zone thru a municipal ordinance is an exercise of police power to promote the good order and general welfare of the people in the locality. Corollary thereto, the state, in order to promote the general welfare, may interfere with personal liberty, with property, and with business and occupations. Thus, persons maybe subjected to certain kinds of restraints and burdens in order to secure the general welfare of the state and to this fundamental aim of government, the rights of the individual may be subordinated. The ordinance which regulates the location of funeral homes has been adopted as part of comprehensive zoning plans for the orderly development of the area covered thereunder.

APPEARANCES OF COUNSEL

Gonzales, Batiller, Bilog & Associates for petitioner.
Garcilaso F. Vega for private respondents.

D E C I S I O N

ROMERO, *J.*:

In the case before us, we are called upon to decide whether or not petitioner's operation of a funeral home constitutes permissible use within a particular district or zone in Davao City.

On November 17, 1982, the Sangguniang Panlungsod of Davao City enacted Ordinance No. 363, series of 1982 otherwise known

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as the "Expanded Zoning Ordinance of Davao City," Section 8 of which states:

"Section 8. *USE REGULATIONS IN C-2 DISTRICTS* (Shaded light red in the Expanded Zoning Map) — AC — 2 District shall be dominantly for commercial and compatible industrial uses as provided hereunder:

1. x x x x x x x x x

2. x x x x x x x x x

3.1 Funeral Parlors/Memorial Homes with adequate off street parking space (see parking standards of P.D. 1096) and *provided that they shall be established not less than 50 meters from any residential structures, churches and other institutional buildings*." (Italics provided)

Upon prior approval and certification of zoning compliance by Zoning Administrator Hector Esguerra, Building Official Demetrio Alindad issued on February 10, 1987 Building Permit No. 870254 in favor of petitioner for the construction of a funeral parlor in the name and style of Metropolitan Funeral Parlor at Cabaguio Avenue, Agdao, Davao City.

Thereafter, petitioner commenced the construction of his funeral parlor.

Acting on the complaint of several residents of Barangay Agdao, Davao City that the construction of petitioner's funeral parlor violated Ordinance No. 363, since it was allegedly situated within a 50-meter radius from the Iglesia ni Kristo Chapel and several residential structures, the Sangguniang Panlungsod conducted an investigation and found that "the nearest residential structure, owned by Wilfred G. Tepoot is only 8 inches to the south. x x x."[1]

Notwithstanding the findings of the Sangguniang Panlungsod, petitioner continued to construct his funeral parlor which was finished on November 3, 1987.

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[1] *Rollo*, p. 43.

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Consequently, private respondents filed on September 6, 1988 a case for the declaration of nullity of a building permit with preliminary prohibitory and mandatory injunction and/or restraining order with the trial court.[2]

After conducting its own ocular inspection on March 30, 1989, the lower court, in its order dated July 6, 1989, dismissed the complaint based on the following findings:[3]

"1. That the residential building owned by Cribillo and Iglesia ni Kristo chapel are 63.25 meters and 55.95 meters away, respectively from the funeral parlor.

2. Although the residential building owned by certain Mr. Tepoot is adjacent to the funeral parlor, and is only separated therefrom by a concrete fence, said residential building is being rented by a certain Mr. Asiaten who actually devotes it to his laundry business with machinery thereon.

3. Private respondent's suit is premature as they failed to exhaust the administrative remedies provided by Ordinance No. 363."

Hence, private respondents appealed to the Court of Appeals. (CA G.R. No. 23243).

In its decision dated November 29, 1991, the Court of Appeals reversed the lower court by annulling building permit No. 870254 issued in favor of petitioner.[4] It ruled that although the buildings owned by Cribillo and Iglesia Ni Kristo were beyond the 50-meter residential radius prohibited by Ordinance 363, the construction of the funeral parlor was within the 50-meter radius measured from the Tepoot's building. The Appellate Court disagreed with the lower court's determination that Tepoot's building was commercial and ruled that although it was used by Mr. Tepoot's lessee for laundry business, it was a residential lot as reflected in the tax declaration, thus paving the way for the application of Ordinance No. 363.

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[2] Annex "C", *Rollo*, p. 55.

[3] Annex "P", *Rollo*, pp. 106-110.

[4] *Rollo*, pp. 40-50.

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Hence, this appeal based on the following grounds:

"The Respondent Court of Appeals erred in concluding that the Tepoot building adjacent to petitioner's funeral parlor is residential simply because it was allegedly declared as such for taxation purposes, in complete disregard of Ordinance No. 363 (The Expanded Zoning Ordinance of Davao City) declaring the subject area as dominantly for commercial and compatible industrial uses."

We reverse the Appellate Court and reinstate the ruling of the lower court that petitioner did not violate Section 8 of Davao City Ordinance No. 363. It must be emphasized that the question of whether Mr. Tepoot's building is residential or not is a factual determination which we should not disturb. As we have repeatedly enunciated, the resolution of factual issues is the function of the lower courts where findings on these matters are received with respect and are in fact binding on this court, except only where the case is shown as coming under the accepted exceptions.[5]

Although the general rule is that factual findings of the Court of Appeals are conclusive on us,[6] this admits of exceptions as when the findings or conclusions of the Court of Appeals and the trial court are contrary to each other.[7] While the trial court ruled that Tepoot's building was commercial, the Appellate Court ruled otherwise. Thus we see the necessity of reading and examining the pleadings and transcripts submitted before the trial court.

In the case at bar, the testimony of City Councilor Vergara shows that Mr. Tepoot's building was used for a dual purpose both as a dwelling and as a place where a laundry business was conducted.[8]

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[5] *FNCB Finance v. Estavillo,* G.R. No. 93394, December 20, 1990, 192 SCRA 514.

[6] *Guita v. Court of Appeals*, G.R. No. 60409, November 11, 1985, 139 SCRA 576.

[7] *Quality Tobacco Corp. v. Intermediate Appellate Court,* G.R. No. 65005, July 5, 1990, 187 SCRA 210; *Valenzuela v. Court of Appeals*, G.R. No. 83122, October 19, 1990, 191 SCRA 1.

[8] Hearing, October 27, 1988.

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But while its commercial aspect has been established by the presence of machineries and laundry paraphernalia, its use as a residence, other than being declared for taxation purposes as such, was not fully substantiated.

The reversal by the Court of Appeals of the trial court's decision was based on Tepoot's building being declared for taxation purposes as residential. It is our considered view, however, that a tax declaration is not conclusive of the nature of the property for zoning purposes. A property may have been declared by its owner as residential for real estate taxation purposes but it may well be within a commercial zone. A discrepancy may thus exist in the determination of the nature of property for real estate taxation purposes vis-a-vis the determination of a property for zoning purposes.

Needless to say, even if we are to examine the evidentiary value of a tax declaration under the Real Property Tax Code, a tax declaration only enables the assessor to identify the same for assessment levels. In fact, a tax declaration does not bind a provincial/city assessor, for under Sec. 22 of the Real Estate Tax Code,[9] appraisal and assessment are based on the actual use irrespective of "any previous assessment or taxpayer's valuation thereon," which is based on a taxpayer's declaration. In fact, a piece of land declared by a taxpayer as residential may be assessed by the provincial or city assessor as commercial because its actual use is commercial.

The trial court's determination that Mr. Tepoot's building is commercial and, therefore, Sec. 8 is inapplicable, is strengthened by the fact that the Sangguniang Panlungsod has declared the questioned area as commercial or C-2. Consequently, even if Tepoot's building was declared for taxation purposes as residential, once a local government has reclassified an area as commercial, that determination for zoning purposes must prevail. While the commercial character of the questioned vicinity has

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[9] Presidential Decree No. 464, entitled, "Enacting a Real Property Tax Code."

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been declared thru the ordinance, private respondents have failed to present convincing arguments to substantiate their claim that Cabaguio Avenue, where the funeral parlor was constructed, was still a residential zone. Unquestionably, the operation of a funeral parlor constitutes a "commercial purpose," as gleaned from Ordinance No. 363.

The declaration of the said area as a commercial zone thru a municipal ordinance is an exercise of police power to promote the good order and general welfare of the people in the locality. Corollary thereto, the state, in order to promote the general welfare, may interfere with personal liberty, with property, and with business and occupations.[10] Thus, persons may be subjected to certain kinds of restraints and burdens in order to secure the general welfare of the state and to this fundamental aim of government, the rights of the individual may be subordinated. The ordinance which regulates the location of funeral homes has been adopted as part of comprehensive zoning plans for the orderly development of the area covered thereunder.

WHEREFORE, the decision of the Court of Appeals dated November 29, 1991 is hereby *REVERSED* and the order dated July 6, 1989 of the Regional Trial Court of Davao City is *REINSTATED*.

SO ORDERED.

Feliciano (Chairman), Bidin, Melo, and *Vitug, JJ.*, concur.

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[10] *Sangalang v. Intermediate Court*, G.R. Nos. 71169, 76394, 74376 and 82281, December 22, 1988, 168 SCRA 634; *Ortigas & Co. Ltd. Partnership v. Feati Bank and Trust Co.*, No. L-24670, December 14, 1989, 94 SCRA 533.