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count (or a total of ₱100,000). The amount of ₱50,000 for moral damages is also awarded for each count of rape (or a total of ₱100,000) in line with current jurisprudence.

Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, and *Callejo, Sr., JJ.*, concur.

Puno, J., on official business.

Azcuna, J., on leave.

FIRST DIVISION

[G.R. No. 143978. December 3, 2002]

MANUEL B. TAN, GREGG M. TECSON and ALEXANDER SALDAÑA, *petitioners, vs.* **EDUARDO R. GULLAS and NORMA S. GULLAS,** *respondents.*

SYNOPSIS

Private respondents spouses Eduardo R. Gullas and Norma S. Gullas executed a special power of attorney authorizing petitioners Manuel B. Tan and his associates Gregg M. Tecson and Alexandra Saldeña to negotiate for the sale of their land located in Minglanilla, Cebu. Subsequently, Tan introduced to Eduardo Gullas the representatives of the Sisters of Mary of Banneaux, Inc., a religious organization interested in acquiring the said property at a reduced selling price of ₱530.00 per square meter. On July 3, 1992, spouses Gullas agreed to sell the property to the Sisters of Mary. In the afternoon of the said date,

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petitioners went to see Eduardo Gullas to claim their commission, however, he told them that he and his wife agreed to sell the property to the Sisters of Mary, hence, refused to pay their broker's fee. On July 17, 1992, the sale was consummated. Accordingly, petitioners filed a complaint against private respondents for recovery of their broker's fee. In their answer, private respondents countered that another broker, Roberto Pacana, introduced the property to the Sisters of Mary ahead of the petitioners. After trial, the court *a quo* rendered judgment in favor of petitioner. Both parties appealed. The Court of Appeals reversed and set aside the lower court's decision. Hence, this petition.

The petition was granted. It is readily apparent that private respondents were trying to evade payment of the commission which rightfully belong to petitioners as brokers with respect to the sale. There was no dispute as to the role that petitioners played in the transaction. At the very least, petitioners set the sale in motion. They were not able to participate in its consummation only because they were prevented from doing so by the acts of the private respondents. Clearly, therefore, petitioners, as brokers, should be entitled to the commission whether or not the sale of the property subject matter of the contract was concluded through their efforts. However, the actual purchase price for which the land was sold was only ₱200.00 per square meter. Therefore, equity considerations dictate that petitioners' commission must be based on this price. To rule otherwise would constitute unjust enrichment on the part of petitioners as brokers.

SYLLABUS

1. CIVIL LAW; CONTRACTS; AGENCY; BROKER; DEFINED. — In *Schmid and Oberly v. RJL Martinez Fishing Corporation,* we defined a "broker" as "one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him. x x x a broker is one whose occupation is to *bring the parties together,* in matters of trade, commerce or navigation."

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2. ID.; ID.; ID.; NON-EXCLUSIVITY OF THE AUTHORITY TO SELL IS NOT ILLEGAL *PER SE*. — During the trial, it was established that petitioners, as brokers, were authorized by private respondents to negotiate for the sale of their land within a period of one month reckoned from June 29, 1992. The authority given to petitioners was non-exclusive, which meant that private respondents were not precluded from granting the same authority to other agents with respect to the sale of the same property. In fact, private respondent authorized another agent in the person of Mr. Bobby Pacana to sell the same property. There was nothing illegal or amiss in this arrangement, *per se,* considering the non-exclusivity of petitioners' authority to sell. The problem arose when it eventually turned out that these agents were entertaining one and the same buyer, the Sisters of Mary.

3. ID.; ID.; ID.; AGENT RECEIVES COMMISSION UPON THE SUCCESSFUL CONCLUSION OF SALE. — It is readily apparent that private respondents are trying to evade payment of the commission which rightfully belong to petitioners as brokers with respect to the sale. There was no dispute as to the role that petitioners played in the transaction. At the very least, petitioners set the sale in motion. They were not able to participate in its consummation only because they were prevented from doing so by the acts of the private respondents. In the case of *Alfred Hahn v. Court of Appeals and Bayerische Motoren Werke Aktiengesellschaft (BMW)* we ruled that, "An *agent* receives a commission upon the successful conclusion of a sale. On the other hand, a *broker* earns his pay *merely by bringing the buyer and the seller together,* even if no sale is eventually made." Clearly, therefore, petitioners, as brokers, should be entitled to the commission whether or not the sale of the property subject matter of the contract was concluded through their efforts.

4. ID.; ID.; ID.; ID.; APPLIED IN CASE AT BAR. — As correctly observed by the trial court, the argument of the private respondents that Pacana was the one entitled to the stipulated 3% commission is untenable, considering that it was the petitioners who were responsible for the introduction of the representatives of the Sisters of Mary to private respondent Eduardo Gullas. Private respondents, however, maintain that they were not aware that their respective agents were negotiating

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to sell said property to the same buyer. Private respondents failed to prove their contention that Pacana began negotiations with private respondent Norma Gullas way ahead of petitioners. They failed to present witnesses to substantiate this claim. It is curious that Mrs. Gullas herself was not presented in court to testify about her dealings with Pacana. Neither was Atty. Nachura who was supposedly the one actively negotiating on behalf of the Sisters of Mary, ever presented in court.

5. **ID.; ID.; ID.; INCONSISTENT WITH SOUND BUSINESS PRACTICE THAT THE AUTHORITY TO SELL IS CONTAINED IN AN UNDATED AND UNNOTARIZED SPECIAL POWER OF ATTORNEY.** — Private respondents' contention that Pacana was the one responsible for the sale of the land is also unsubstantiated. There was nothing on record which established the existence of a previous negotiation among Pacana, Mrs. Gullas and the Sisters of Mary. The only piece of evidence that the private respondents were able to present is an undated and unnotarized Special Power of Attorney in favor of Pacana. While the lack of a date and an oath do not necessarily render said Special Power of Attorney invalid, it should be borne in mind that the contract involves a considerable amount of money. Hence, it is inconsistent with sound business practice that the authority to sell is contained in an undated and unnotarized Special Power of Attorney. Petitioners, on the other hand, were given the written authority to sell by the private respondents.

6. **ID.; ID.; ID.; ACTUAL PURCHASE PRICE MUST BE THE BASIS OF THE PETITIONER'S COMMISSION.** — Following the stipulation in the Special Power of Attorney, petitioners are entitled to 3% commission for the sale of the land in question. Petitioners maintain that their commission should be based on the price at which the land was offered for sale, *i.e.*, ₱530.00 per square meter. However, the actual purchase price for which the land was sold was only ₱200.00 per square meter. Therefore, equity considerations dictate that petitioners' commission must be based on this price. To rule otherwise would constitute unjust enrichment on the part of petitioners as brokers.

7. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION IS ACCORDED GREAT RESPECT AND FINALITY ON APPEAL.** — The trial court's

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evaluation of the witnesses is accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence, which if reconsidered, would alter the result of the case.

APPEARANCES OF COUNSEL

Yulando L. Ursal for petitioners.
Francisco M. Malilong, Jr. for private respondents.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

This is a petition for review seeking to set aside the decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 46539, which reversed and set aside the decision[3] of the Regional Trial Court of Cebu City, Branch 22 in Civil Case No. CEB-12740.

The records show that private respondents, Spouses Eduardo R. Gullas and Norma S. Gullas, were the registered owners of a parcel of land in the Municipality of Minglanilla, Province of Cebu, measuring 104,114 sq. m., with Transfer Certificate of Title No. 31465.[4] On June 29, 1992, they executed a special power of attorney[5] authorizing petitioners Manuel B. Tan, a licensed real estate broker,[6] and his associates Gregg M. Tecson and Alexander Saldaña, to negotiate for the sale of the land at Five Hundred Fifty Pesos (₱550.00) per square meter, at a

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[1] Dated May 29, 2000, *Rollo*, p.16.

[2] Penned by Associate Justice Mariano M. Umali and concurred in by Associate Justices Conrado M. Vazquez, Jr. and Eriberto U. Rosario, Jr.

[3] Penned by Judge Pampio A. Abarintos, promulgated on March 11, 1994, *Rollo*, p. 8.

[4] Annex "F", Record, p. 16.

[5] Annex "A", Record, pp. 8-9.

[6] Folder of Exhibits, Exhibit "I".

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commission of 3% of the gross price. The power of attorney was non-exclusive and effective for one month from June 29, 1992.[7]

On the same date, petitioner Tan contacted Engineer Edsel Ledesma, construction manager of the Sisters of Mary of Banneaux, Inc. (hereafter, Sisters of Mary), a religious organization interested in acquiring a property in the Minglanilla area.

In the morning of July 1, 1992, petitioner Tan visited the property with Engineer Ledesma. Thereafter, the two men accompanied Sisters Michaela Kim and Azucena Gaviola, representing the Sisters of Mary, to see private respondent Eduardo Gullas in his office at the University of Visayas. The Sisters, who had already seen and inspected the land, found the same suitable for their purpose and expressed their desire to buy it.[8] However, they requested that the selling price be reduced to Five Hundred Thirty Pesos (₱530.00) per square meter instead of Five Hundred Fifty Pesos (₱550.00) per square meter. Private respondent Eduardo Gullas referred the prospective buyers to his wife.

It was the first time that the buyers came to know that private respondent Eduardo Gullas was the owner of the property. On July 3, 1992, private respondents agreed to sell the property to the Sisters of Mary, and subsequently executed a special power of attorney[9] in favor of Eufemia Cañete, giving her the special authority to sell, transfer and convey the land at a fixed price of Two Hundred Pesos (₱200.00) per square meter.

On July 17, 1992, attorney-in-fact Eufemia Cañete executed a deed of sale in favor of the Sisters of Mary for the price of Twenty Million Eight Hundred Twenty Two Thousand Eight Hundred Pesos (₱20,822.800.00), or at the rate of Two Hundred

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[7] *Ibid.*, Exhibits "A" and "A-3".

[8] Record, p. 131.

[9] Folder of Exhibits, Exhibit "C", dated July 4, 1992.

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Pesos (₱200.00) per square meter.[10] The buyers subsequently paid the corresponding taxes.[11] Thereafter, the Register of Deeds of Cebu Province issued TCT No. 75981 in the name of the Sisters of Mary of Banneaux, Inc.[12]

Earlier, on July 3, 1992, in the afternoon, petitioners went to see private respondent Eduardo Gullas to claim their commission, but the latter told them that he and his wife have already agreed to sell the property to the Sisters of Mary. Private respondents refused to pay the broker's fee and alleged that another group of agents was responsible for the sale of land to the Sisters of Mary.

On August 28, 1992, petitioners filed a complaint[13] against the defendants for recovery of their broker's fee in the sum of One Million Six Hundred Fifty Five Thousand Four Hundred Twelve and 60/100 Pesos (₱1,655,412.60), as well as moral and exemplary damages and attorney's fees. They alleged that they were the efficient procuring cause in bringing about the sale of the property to the Sisters of Mary, but that their efforts in consummating the sale were frustrated by the private respondents who, in evident bad faith, malice and in order to evade payment of broker's fee, dealt directly with the buyer whom petitioners introduced to them. They further pointed out that the deed of sale was undervalued; obviously to evade payment of the correct amount of capital gains tax, documentary stamps and other internal revenue taxes.

In their answer, private respondents countered that, contrary to petitioners' claim, they were not the efficient procuring cause in bringing about the consummation of the sale because another broker, Roberto Pacana, introduced the property to the Sisters of Mary ahead of the petitioners.[14] Private respondents

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[10] *Ibid.*, Exhibit "D".

[11] *Id.*, Exhibit "E".

[12] *Id.*, Exhibit "F".

[13] Record, pp. 1-7.

[14] Record, pp. 28-34.

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maintained that when petitioners introduced the buyers to private respondent Eduardo Gullas, the former were already decided in buying the property through Pacana, who had been paid his commission. Private respondent Eduardo Gullas admitted that petitioners were in his office on July 3, 1992, but only to ask for the reimbursement of their cellular phone expenses.

In their reply and answer to counterclaim,[15] petitioners alleged that although the Sisters of Mary knew that the subject land was for sale through various agents, it was petitioners who introduced them to the owners thereof.

After trial, the lower court rendered judgment in favor of petitioners, the dispositive portion of which reads:

> WHEREFORE, UPON THE AEGIS OF THE FOREGOING, judgment is hereby rendered for the plaintiffs and against the defendants. By virtue hereof, defendants Eduardo and Norma Gullas are hereby ordered to pay jointly and severally plaintiffs Manuel Tan, Gregg Tecson and Alexander Saldaña;
>
> 1) The sum of SIX HUNDRED TWENTY FOUR THOUSAND AND SIX HUNDRED EIGHTY FOUR PESOS (₱624,684.00) as broker's fee with legal interest at the rate of 6% per annum from the date of filing of the complaint; and
>
> 2) The sum of FIFTY THOUSAND PESOS (₱50,000.00) as attorney's fees and costs of litigation.
>
> For lack of merit, defendants' counterclaim is hereby DISMISSED.
>
> IT IS SO ORDERED.[16]

Both parties appealed to the Court of Appeals. Private respondents argued that the lower court committed errors of fact and law in holding that it was petitioners' efforts which brought about the sale of the property and disregarding the previous negotiations between private respondent Norma Gullas and the Sisters of Mary and Pacana. They further alleged that

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[15] *Id.*, at 35-38.

[16] Record, p. 206.

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the lower court had no basis for awarding broker's fee, attorney's fees and the costs of litigation to petitioners.[17]

Petitioners, for their part, assailed the lower court's basis of the award of broker's fee given to them. They contended that their 3% commission for the sale of the property should be based on the price of ₱55,180,420.00, or at ₱530.00 per square meter as agreed upon and not on the alleged actual selling price of ₱20,822,800.00 or at ₱200.00 per square meter, since the actual purchase price was undervalued for taxation purposes. They also claimed that the lower court erred in not awarding moral and exemplary damages in spite of its finding of bad faith; and that the amount of ₱50,000.00 as attorney's fees awarded to them is insufficient. Finally, petitioners argued that the legal interest imposed on their claim should have been pegged at 12% per annum instead of the 6% fixed by the court.[18]

The Court of Appeals reversed and set aside the lower court's decision and rendered another judgment dismissing the complaint.[19]

Hence, this appeal.

Petitioners raise following issues for resolution:

I.

THE APPELLATE COURT GROSSLY ERRED IN THEIR FINDING THAT THE PETITIONERS ARE NOT ENTITLED TO THE BROKERAGE COMMISSION.

II.

IN DISMISSING THE COMPLAINT, THE APPELLATE COURT HAS DEPRIVED THE PETITIONERS OF MORAL AND EXEMPLARY DAMAGES, ATTORNEYS' FEES AND INTEREST IN THE FORBEARANCE OF MONEY.

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[17] *Rollo*, p. 21.

[18] *Id.*, at 21-22.

[19] *Rollo*, pp. 32-33.

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The petition is impressed with merit.

The records show that petitioner Manuel B. Tan is a licensed real estate broker, and petitioners Gregg M. Tecson and Alexander Saldaña are his associates. In *Schmid and Oberly v. RJL Martinez Fishing Corporation*,[20] we defined a "broker" as "one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him. x x x a broker is one whose occupation is to *bring the parties together,* in matters of trade, commerce or navigation." (Italics supplied)

During the trial, it was established that petitioners, as brokers, were authorized by private respondents to negotiate for the sale of their land within a period of one month reckoned from June 29, 1992. The authority given to petitioners was non-exclusive, which meant that private respondents were not precluded from granting the same authority to other agents with respect to the sale of the same property. In fact, private respondent authorized another agent in the person of Mr. Bobby Pacana to sell the same property. There was nothing illegal or amiss in this arrangement, *per se*, considering the non-exclusivity of petitioners' authority to sell. The problem arose when it eventually turned out that these agents were entertaining one and the same buyer, the Sisters of Mary.

As correctly observed by the trial court, the argument of the private respondents that Pacana was the one entitled to the stipulated 3% commission is untenable, considering that it was the petitioners who were responsible for the introduction of the representatives of the Sisters of Mary to private respondent Eduardo Gullas. Private respondents, however, maintain that they were not aware that their respective agents were negotiating to sell said property to the same buyer.

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[20] 166 SCRA 493 (1988).

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Private respondents failed to prove their contention that Pacana began negotiations with private respondent Norma Gullas way ahead of petitioners. They failed to present witnesses to substantiate this claim. It is curious that Mrs. Gullas herself was not presented in court to testify about her dealings with Pacana. Neither was Atty. Nachura who was supposedly the one actively negotiating on behalf of the Sisters of Mary, ever presented in court.

Private respondents' contention that Pacana was the one responsible for the sale of the land is also unsubstantiated. There was nothing on record which established the existence of a previous negotiation among Pacana, Mrs. Gullas and the Sisters of Mary. The only piece of evidence that the private respondents were able to present is an undated and unnotarized Special Power of Attorney in favor of Pacana. While the lack of a date and an oath do not necessarily render said Special Power of Attorney invalid, it should be borne in mind that the contract involves a considerable amount of money. Hence, it is inconsistent with sound business practice that the authority to sell is contained in an undated and unnotarized Special Power of Attorney. Petitioners, on the other hand, were given the written authority to sell by the private respondents.

The trial court's evaluation of the witnesses is accorded great respect and finality in the absence of any indication that it overlooked certain facts or circumstances of weight and influence, which if reconsidered, would alter the result of the case.[21]

Indeed, it is readily apparent that private respondents are trying to evade payment of the commission which rightfully belong to petitioners as brokers with respect to the sale. There was no dispute as to the role that petitioners played in the transaction. At the very least, petitioners set the sale in motion. They were not able to participate in its consummation only

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[21] *People v. Realin*, 301 SCRA 495 (1999); *Yam v. Court of Appeals*, 303 SCRA 1 (1999); *People v. Maglatay*, 304 SCRA 272 (1999).

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because they were prevented from doing so by the acts of the private respondents. In the case of *Alfred Hahn v. Court of Appeals and Bayerische Motoren Werke Aktiengesellschaft (BMW)*[22] we ruled that, "An agent receives a commission upon the successful conclusion of a sale. On the other hand, a broker earns his *pay merely by bringing the buyer and the seller together*, even if no sale is eventually made." (Italics supplied). Clearly, therefore, petitioners, as brokers, should be entitled to the commission whether or not the sale of the property subject matter of the contract was concluded through their efforts.

Having ruled that petitioners are entitled to the brokers' commission, we should now resolve how much commission are petitioners entitled to?

Following the stipulation in the Special Power of Attorney, petitioners are entitled to 3% commission for the sale of the land in question. Petitioners maintain that their commission should be based on the price at which the land was offered for sale, *i.e.*, ₱530.00 per square meter. However, the actual purchase price for which the land was sold was only ₱200.00 per square meter. Therefore, equity considerations dictate that petitioners' commission must be based on this price. To rule otherwise would constitute unjust enrichment on the part of petitioners as brokers.

In the matter of attorney's fees and expenses of litigation, we affirm the amount of ₱50,000.00 awarded by the trial court to the petitioners.

WHEREFORE, in view of the foregoing, the petition is *GRANTED*. The May 29, 2000 decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. The decision of the Regional Trial Court of Cebu City, Branch 22, in Civil Case No. CEB-12740 ordering private respondents Eduardo Gullas and Norma S. Gullas to pay jointly and severally petitioners Manuel B. Tan, Gregg Tecson and Alexander Saldaña the sum of Six Hundred Twenty-Four Thousand and Six Hundred Eighty-Four

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[22] 266 SCRA 537 (1997).

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Pesos (₱624,684.00) as broker's fee with legal interest at the rate of 6% per annum from the filing of the complaint; and the sum of Fifty Thousand Pesos (₱50,000.00) as attorney's fees and costs of litigation, is *REINSTATED*.

SO ORDERED.

Vitug and *Carpio, JJ.*, concur.

Azcuna, J., on official leave.

Davide, Jr., C.J., took no part due to close relationship to a party.

EN BANC

[G.R. Nos. 145343-46. December 3, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO CALDERON,** *accused-appellant.*

SYNOPSIS

For deflowering his very own innocent ten-year old daughter Cheryl Calderon, Eduardo Calderon was convicted by the Regional Trial Court of Iloilo City of one count of attempted rape and three counts of consummated rape, and the supreme penalty of death by lethal injection in each count of consummated rape was imposed upon him. Hence, this automatic review.

The Court ruled that the testimony of a rape victim against her father is entitled to greater weight, since reverence and respect for elders is too deeply ingrained in Filipino children and is even recognized by law. A daughter would not accuse her own father of a serious offense like rape had she not really been aggrieved. Moreover, when a victim says that she has been raped she says in effect all that is necessary to show that