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The state of the evidence being what it is — QUIDATO's identity as the perpetrator being highly doubtful, the crime of Rape not having been established by sufficient and competent evidence, and the key prosecution witnesses, who were minors, having involved themselves in serious contradictions, the Trial Court's verdict of guilt beyond reasonable doubt cannot be sustained. The judgment is based on a misapprehension of facts, which is a recognized exception to the general rule that the findings of the Trial Court regarding the credibility of witnesses command great respect, specially since, in this case, the deciding Judge did not personally hear the testimony of the key witnesses. In fact, it was error for the latter to have assumed that Judge Crisostomo would put into the *expediente* his observations as to the credibility of Nestorio and Wilfredo.

With the foregoing findings, there is no need for a discussion of the other assigned errors.

WHEREFORE, the judgment under automatic review is hereby SET ASIDE and the accused Alberto Quidato hereby acquitted on the ground of reasonable doubt. Costs *de officio*.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, and *Paras, JJ.*, concur.

Feliciano, J., took no part.

SECOND DIVISION

[G.R. No. 54526. August 25, 1986]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner, vs.* **THE COURT OF APPEALS and THE CITY OF DAGUPAN,** *respondents.*

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SYLLABUS

1. **REMEDIAL LAW; APPEALS; COURT WHICH RENDERED THE APPEALED JUDGMENT SHOULD NOT BE MADE PARTY TO AN APPEAL BY *CERTIORARI*.—** It may be necessary to invite attention to the common error of joining the court (be it a Regional Trial Court, the Intermediate Appellate Court, or the Sandiganbayan) as a party respondent in an appeal by *certiorari* to this court under Rule 45 of the Rules of Court. The only parties in an appeal by certiorari are the appellant as petitioner and the appellee as respondent. (Cf. *Elks Club vs. Rovira*, 80 Phil. 272) The court which rendered the judgment appealed from is not a party in said appeal.

2. **ID.; ID.; ID.; EXCEPTION.—** The joinder of the Intermediate Appellate Court or the Sandiganbayan as party respondent in an appeal by *certiorari* is necessary in cases where the petitioner-appellant claims that said court acted without or in excess of its jurisdiction or with grave abuse of discretion. An example of this is a case where the petitioner-appellant claims that the Intermediate Appellate Court or the Sandiganbayan acted with grave abuse of discretion in making its findings of fact, thus justifying the review by this court of said findings of fact. In such a case, the petition for review on certiorari under Rule 45 of the Rules of Court is at the same time a petition for certiorari under Rule 65, and the joinder of the Intermediate Appellate Court or the Sandiganbayan becomes necessary. (Cf. *Lianga Lumber Company vs. Lianga Timber Co., Inc.*, March 31, 1977, 76 SCRA 197)

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; JOINDER OF JUDGE OR COURTS AS PARTY DEFENDANT OR RESPONDENT, NECESSARY.—** It is in the special civil action of certiorari under Section 5 of Rule 65 of the Rules of Court where the court or judge is required to be joined as party defendant or respondent.

4. **CIVIL LAW; PROPERTY; BUILDER IN BAD FAITH LOSES WHAT IS BUILT AND WITHOUT RIGHT TO INDEMNITY.—** Does a possessor in bad faith have the right to remove useful improvements? The answer is clearly in the negative. Recognized authorities on the subject are agreed on this point. Article 449 of the Civil Code of the Philippines provides that "he who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without

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right to indemnity." As a builder in bad faith, NAWASA lost whatever useful improvements it had made without right to indemnity (*Santos vs. Mojica,* Jan. 31, 1969, 26 SCRA 703).

5. **ID.; ID.; RIGHTS OF POSSESSOR IN GOOD FAITH; LIMITATIONS.—** Under Article 546 of said code, only possessor in good faith shall be refunded for useful expenses with the right of retention until reimbursed; and under Article 547 thereof, only a possessor in good faith may remover useful improvements if this can be done without damage to the principal thing and if the person who recovers the possession does not exercise the option of reimbursing the useful expenses.

6. **ID.; ID.; POSSESSOR IN BAD FAITH ENTITLED TO REMOVE IMPROVEMENTS MADE PURELY FOR LUXURY AND MERE PLEASURE; EXCEPTION.—** The right given a possessor in bad faith to remove improvements applies only to improvements for pure luxury or mere pleasure, provided the thing suffers no injury thereby and the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession (Article 549, Civil Code).

7. **ID.; ID.; RULING ON THE CASE OF *CARBONELL vs. COURT OF APPEALS* (66 SCRA 99) DOES NOT ESTABLISH PRECEDENT; CASE AT BAR.—** In the case of *Carbonell vs. Court of Appeals* (66 SCRA 99), both the trial court and the Court of Appeals found that respondents Infantes were possessors in good faith. On appeal, the First Division of this Court reversed the decision of the Court of Appeals and declared petitioner Carbonell to have the superior right to the land in question. On the question of whether or not respondents Infantes were possessors in good faith, four Members ruled that they were not, but as a matter of equity allowed them to remove the useful improvements they had introduced on the land. Inasmuch as only four Members concurred in ruling that respondents Infantes were possessors in bad faith and two Members ruled that they were possessors in good faith, said decision does not establish a precedent. Moreover, the equitable considerations present in said case are not present in the case at bar.

APPEARANCES OF COUNSEL

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APPEARANCES OF COUNSEL

Manuel M. Lazaro, Felipe S. Aldana & Virgilio C. Abijo and Government Corporate Counsel for petitioner
Miguel T. Caguioa for respondent City of Dagupan.

D E C I S I O N

FERIA, *J.*:

This is a petition for review on *certiorari* of the decision of the Court of Appeals which affirmed the decision of the then Court of First Instance of Pangasinan. The lower court had declared respondent City of Dagupan the lawful owner of the Dagupan Waterworks System and held that the National Waterworks and Sewerage Authority, now petitioner Metropolitan Waterworks and Sewerage System, was a possessor in bad faith and hence not entitled to indemnity for the useful improvements it had introduced.

Before proceeding further, it may be necessary to invite attention to the common error of joining the court (be it a Regional Trial Court, the Intermediate Appellate Court, or the Sandiganbayan) as a party respondent in an appeal by *certiorari* to this Court under Rule 45 of the Rules of Court. The only parties in an appeal by *certiorari* are the appellant as petitioner and the appellee as respondent. (Cf. *Elks Club vs. Rovira*, 80 Phil. 272) The court which rendered the judgment appealed from is not a party in said appeal. It is in the special civil action of *certiorari* under Section 5 of Rule 65 of the Rules of Court where the court or judge is required to be joined as party defendant or respondent. The joinder of the Intermediate Appellate Court or the Sandiganbayan as party respondent in an appeal by *certiorari* is necessary in cases where the petitioner-appellant claims that said court acted without or in excess of its jurisdiction or with grave abuse of discretion. An example of this is a case where the petitioner-appellant claims that the Intermediate Appellate Court or the Sandiganbayan acted with grave abuse of discretion in making its findings of fact, thus justifying the review by this court of said findings of fact. (See the exceptions to the rule of conclusiveness of the findings of fact of the *Intermediate Appellate Court or the Sandiganbayan*

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in the case of *Sacay vs. Sandiganbayan*, G.R. Nos. 66497-98, July 10, 1986.) In such a case, the petition for review on certiorari under Rule 45 of the Rules of Court is at the same time a petition for *certiorari* under Rule 65, and the joinder of the Intermediate Appellate Court or the Sandiganbayan becomes necessary. (Cf. *Lianga Lumber Company vs. Lianga Timber Co., Inc.*, March 31, 1977, 76 SCRA 197).

The City of Dagupan (hereinafter referred to as the CITY) filed a complaint against the former National Waterworks and Sewerage Authority (hereinafter referred to as the NAWASA), now the Metropolitan Waterworks and Sewerage System (hereinafter referred to as MWSS), for recovery of the ownership and possession of the Dagupan Waterworks System. NAWASA interposed as one of its special defenses R.A. 1383 which vested upon it the ownership, possession and control of all waterworks systems throughout the Philippines and as one of its counterclaims the reimbursement of the expenses it had incurred for necessary and useful improvements amounting to P255,000.00. Judgment was rendered by the trial court in favor of the CITY on the basis of a stipulation of facts. The trial court found NAWASA to be a possessor in bad faith and hence not entitled to the reimbursement claimed by it. NAWASA appealed to the then Court of Appeals and argued in its lone assignment of error that the CITY should have been held liable for the amortization of the balance of the loan secured by NAWASA for the improvement of the Dagupan Waterworks System. The appellate court affirmed the judgment of the trial court and ruled as follows:

"However, as already found above, these useful expenses were made in utter bad faith for they were instituted after the complaint was filed and after numerous Supreme Court decisions were promulgated declaring unconstitutional the taking by NAWASA of the patrimonial waterworks systems of cities, municipalities and provinces without just compensation.

"Under Article 546 of the New Civil Code cited by the appellant, it is clear that a builder or a possessor in bad faith is not entitled to indemnity for any useful improvement on the premises. (*Santos vs. Mojica*, L-25450, Jan. 31, 1969). In fact, he is not entitled to any

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right regarding the useful expenses (II Paras (1971) 387). He shall not have any right whatsoever. Consequently, the owner shall be entitled to all of the useful improvements without any obligation on his part (Jurado, Civil Law Reviewer (1974) 223)."

Petitioner-Appellant MWSS, successor-in-interest of the NAWASA, appealed to this Court raising the sole issue of whether or not it has the right to remove all the useful improvements introduced by NAWASA to the Dagupan Waterworks System, notwithstanding the fact that NAWASA was found to be a possessor in bad faith. In support of its claim for removal of said useful improvements, MWSS argues that the pertinent laws on the subject, particularly Articles 546, 547 and 549 of the Civil Code of the Philippines, do not definitely settle the question of whether a possessor in bad faith has the right to remove useful improvements. To bolster its claim MWSS further cites the decisions in the cases of *Mindanao Academy, Inc. vs. Yap* (13 SCRA 190) and *Carbonell vs. Court of Appeals* (69 SCRA 99).

The CITY in its brief questions the raising of the issue of the removal of useful improvements for the first time in this Court, inasmuch as it was not raised in the trial court, much less assigned as an error before the then Court of Appeals. The CITY further argues that petitioner, as a possessor in bad faith, has absolutely no right to the useful improvements; that the rulings in the cases cited by petitioner are not applicable to the case at bar; that even assuming that petitioner has the right to remove the useful improvements, such improvements were not actually identified, and hence a rehearing would be required which is improper at this stage of the proceedings; and finally, that such improvements, even if they could be identified, could not be separated without causing substantial injury or damage to the Dagupan Waterworks System.

The procedural objection of the CITY is technically correct. NAWASA should have alleged its additional counterclaim in the alternative — for the reimbursement of the expenses it had incurred for necessary and useful improvements or for the removal of all the useful improvements it had introduced.

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Petitioner, however, argues that although such issue of removal was never pleaded as a counterclaim, nevertheless it was joined with the implied consent of the CITY, because the latter never filed a counter-manifestation or objection to petitioner's manifestation wherein it stated that the improvements were separable from the system, and quotes the first part of Sec. 5 of Rule 10 of the Rules of Court to support its contention. Said provision reads as follows:

"SEC. 5. Amendment to conform to or authorize presentation of evidence. — When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues x x x.

This argument is untenable because the above-quoted provision is premised on the fact that evidence had been introduced on an issue not raised by the pleadings without any objection thereto being raised by the adverse party. In the case at bar, no evidence whatsoever had been introduced by petitioner on the issue of removability of the improvements and the case was decided on a stipulation of facts. Consequently, the pleadings could not be deemed amended to conform to the evidence.

However, We shall overlook this procedural defect and rule on the main issue raised in this appeal, to wit: Does a possessor in bad faith have the right to remove useful improvements? The answer is clearly in the negative. Recognized authorities on the subject are agreed on this point.**

Article 449 of the Civil Code of the Philippines provides that "he who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity." As a builder in bad faith, NAWASA lost whatever

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** See Paras (1984) Vol. II, pp. 436-437; Padilla (1972) Vol. II pp. 457-458; Caguioa (1966) Vol. II, p. 201; Jurado (1981) Civil Law Reviewer p. 250; Tolentino (1972) Vol. II, p. 547.

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useful improvements it had made without right to indemnity (*Santos vs. Mojica*, Jan. 31, 1969, 26 SCRA 703).

Moreover, under Article 546 of said Code, only a possessor in good faith shall be refunded for useful expenses with the right of retention until reimbursed; and under Article 547 thereof, only a possessor in good faith may remove useful improvements if this can be done without damage to the principal thing and if the person who recovers the possession does not exercise the option of reimbursing the useful expenses. The right given a possessor in bad faith is to remove improvements applies only to improvements for pure luxury or mere pleasure, provided the thing suffers no injury thereby and the lawful possessor does not prefer to retain them by paying the value they have at the time he enters into possession (Article 549, *Id.*).

The decision in the case of *Mindanao Academy, Inc. vs. Yap* (13 SCRA 190) cited by petitioner does not support its stand. On the contrary, this Court ruled in said case that "if the defendant constructed a new building, as he alleges, he cannot recover its value because the construction was done after the filing of the action for annulment, thus rendering him a builder in bad faith who is denied by law any right of reimbursement." What this Court allowed appellant Yap to remove were the equipment, books, furniture and fixtures brought in by him, because they were outside of the scope of the judgment and may be retained by him.

Neither may the decision in the case of *Carbonell vs. Court of Appeals* (69 SCRA 99), also cited by petitioner, be invoked to modify the clear provisions of the Civil Code of the Philippines that a possessor in bad faith is not entitled to reimbursement of useful expenses or to removal of useful improvements.

In said case, both the trial court and the Court of Appeals found that respondents Infantes were possessors in good faith. On appeal, the First Division of this Court reversed the decision of the Court of Appeals and declared petitioner Carbonell to have the superior right to the land in question. On the question of whether or not respondents Infantes were possessors in good faith, four Members ruled that they were not, but as a matter of equity allowed them to remove the useful improvements

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they had introduced on the land. Justice Teehankee (now Chief Justice) concurred on the same premise as the dissenting opinion of Justice Muñoz Palma that both the conflicting buyers of the real property in question, namely petitioner Carbonell as the first buyer and respondents Infantes as the second buyer, may be deemed purchasers in good faith at the respective dates of their purchase. Justice Muñoz Palma dissented on the ground that since both purchasers were undoubtedly in good faith, respondents Infantes' prior registration of the sale in good faith entitled them to the ownership of the land. Inasmuch as only four Members concurred in ruling that respondents Infantes were possessors in bad faith and two Members ruled that they were possessors in good faith, said decision does not establish a precedent. Moreover, the equitable consideration present in said case are not present in the case at bar.

WHEREFORE, the decision of the appellate court is affirmed with costs against petitioner.

SO ORDERED.

Fernan Gutierrez, Jr., Paras, and Cruz, JJ., concur.

Alampay, J.,*** took no part.

EN BANC

[Adm. Matter No. 141-MTJ. August 26, 1986]

RE: CONVICTION OF MUNICIPAL CIRCUIT JUDGE AMANDITO D. ARANETA BY THE SANDIGANBAYAN IN CRIMINAL CASE NO. 7220.

*** Justice Alampay took no part. Justice Cruz was designated to sit in the Second Division.