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Indeterminate Sentence Law, the minimum penalty to be meted out on petitioner should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional,* and the maximum should be taken from the medium period of *prision mayor* (Article 64, par. 1 of the Revised Penal Code) the range of which is eight (8) years and one (1) day to ten (10) years. Considering that no aggravating or mitigating circumstance attended the commission of the crime of frustrated homicide, petitioner shall be sentenced to an indeterminate prison term of one (1) year and one (1) day of *prision correccional,* as minimum, to eight (8) years and one (1) day of *prision mayor* medium, as maximum.

WHEREFORE, premises considered, the assailed Decision, dated 11 March 1997, is hereby *MODIFIED*. Petitioner is found guilty of *FRUSTRATED HOMICIDE* and sentenced to a prison term of one (1) year and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor* medium, as maximum.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Pardo, and *Ynares-Santiago, JJ.*, concur.

EN BANC

[G.R. No. 119064. August 22, 2000]

NENG "KAGUI KADIGUIA" MALANG, *petitioner, vs.* **HON. COROCOY MOSON, Presiding Judge of 5th Shari'a District Court, Cotabato City, HADJI MOHAMMAD ULYSSIS MALANG, HADJI ISMAEL MALINDATU MALANG, FATIMA MALANG, DATULNA MALANG, LAWANBAI MALANG, JUBAIDA KADO MALANG, NAYO OMAL MALANG and MABAY GANAP MALANG,** *respondents.*

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SYNOPSIS

Hadji Abdula Malang, a Muslim, contracted marriage with Aida Limba. They begot three sons and a daughter. Hadji Abdula and Aida already had two children when he married for the second time another Muslim named Jubaida Kado in Talayan, Maguindanao. No child was born out of the second marriage. When Aida was pregnant with their fourth child, Abdula divorced her. In 1965, Abdula married another Muslim, Nayo H. Omar, but they were childless, Thereafter, he contracted another marriage with Hadji Mabai, and soon they had a daughter named Fatima. Not long after, Abdula married three other Muslim women, but he eventually divorced them. Hadji Abdula then migrated in Tambunan where, in 1972 he married petitioner Neng Malang, his fourth wife, excluding the wives he divorced. They established residence in Cotabato City, but they were childless. During their marriage, Abdula acquired properties and deposited money in different banks. On December 18, 1993, while he was living with petitioner in Cotabato City, Abdula died without leaving a will. On January 21, 1994, petitioner filed with the Shari'a District Court in Cotabato City a petition for settlement of estate with the prayer that letters of administration be issued in the name of petitioner's niece. After trial, the Shari'a court held that the regime of complete separation of property under Shari'a Islamic law should be applied in the distribution of the estate of Hadji Abdula, and not the conjugal partnership of gains under the Civil Law as contended by petitioner. On October 4, 1994, petitioner filed a motion for reconsideration, but the same was denied. Hence, this petition.

The Supreme Court found that the record of the case was simply inadequate for purposes of arriving at a fair and complete resolution of the petition. Any attempt at this point to dispense with the basic issue given the scantiness of the evidence before the Court could result in grave injustice to the parties in this case, as well as cast profound implications on Muslim families similarly or analogously situated to the parties herein. Justice and accountability dictate a remand; trial must reopen in order to supply the factual gaps that would be the bases for judgment and, accordingly, allow respondent court to resolve the instant case. The Court thus set out certain guidelines in the

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interpretation and application of pertinent laws to facilitate the task of respondent court. Accordingly, the assailed decision of the Shari'a Court of Cotabato City was set aside, and the instant case was remanded for the reception of additional evidence and resolution of the issues based on the guidelines set out in the decision.

SYLLABUS

1. **CIVIL LAW; MUSLIM CODE; MUST BE APPLIED PROSPECTIVELY.** — The Muslim Code, which is the first comprehensive codification of Muslim personal laws, also provides in respect of acts that transpired prior to its enactment: Art. 186. *Effect of code on past acts.* — (1) Acts executed prior to the effectivity of this Code shall be governed by the laws in force at the time of their execution, and nothing herein except as otherwise specifically provided, shall affect their validity or legality or operate to extinguish any right acquired or liability incurred thereby. The foregoing provisions are consistent with the principle that all laws operate prospectively, unless the contrary appears or is clearly, plainly and unequivocably expressed or necessarily implied; accordingly, every case of doubt will be resolved against the retroactive operation of laws. Article 186 aforecited enunciates the general rule of the Muslim Code to have its provisions applied prospectively, and implicitly upholds the force and effect of a pre-existing body of law, specifically, the Civil Code — in respect of civil acts that took place before the Muslim Code's enactment.

2. **ID.; PERSONS AND FAMILY RELATIONS; CONJUGAL PARTNERSHIP OF GAINS; CO-OWNERSHIP CONTEMPLATED IN ARTICLE 144 OF THE CIVIL CODE NOT APPLICABLE IN CASE AT BAR.** — In a long line of cases, this Court has interpreted the co-ownership provided in Article 144 of the Civil Code to require that the man and woman living together as husband and wife without the benefit of marriage or under a void marriage must not in any way be incapacitated to marry. Situating these rulings to the instant case, therefore, the co-ownership contemplated in Article 144 of the Civil Code cannot apply to Hadji Abdula's marriages celebrated subsequent to a valid and legally existing marriage, since from the point of view of the Civil Code Hadji Abdula is

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not capacitated to marry. However, the wives in such marriages are not precluded from proving that property acquired during their cohabitation with Hadji Abdula is their *exclusive* property, respectively. Absent such proof, however, the presumption is that property acquired during the subsistence of a valid marriage — and in the Civil Code, there can only be one validly existing marriage at any given time — is conjugal property of such subsisting marriage.

3. ID.; ID.; THE STATUS AND CAPACITY TO SUCCEED ON THE PART OF THE INDIVIDUAL PARTIES WHO ENTERED INTO EACH AND EVERY MARRIAGE CEREMONY WILL DEPEND UPON THE LAW IN FORCE AT THE TIME OF THE PERFORMANCE OF THE MARRIAGE RITE. — The status and capacity to succeed on the part of the individual parties who entered into each and every marriage ceremony will depend upon the law in force *at the time of the performance of the marriage rite.* The status and capacity to succeed of the children will depend upon the law in force *at the time of conception or birth* of the child. If the child was conceived or born during the period covered by the governance of the Civil Code, the Civil Code provisions on the determination of the legitimacy or illegitimacy of the child would appear to be in point.

APPEARANCES OF COUNSEL

Arnel S. Datukon for petitioner.
Mama S. Dalandang for private respondents.

D E C I S I O N

GONZAGA-REYES, *J.*:

Presented for resolution in this special civil action of *certiorari* is the issue of whether or not the regime of conjugal partnership of gains governed the property relationship of two Muslims who contracted marriage prior to the effectivity of the Code of Muslim Personal Laws of the Philippines (hereafter, "P.D. 1083" or "Muslim Code"). The question is raised in connection with the settlement of the estate of the deceased husband.

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Hadji Abdula Malang, a Muslim, contracted marriage with Aida (Kenanday) Limba. They begot three sons named Hadji Mohammad Ulyssis, Hadji Ismael Malindatu and Datulna, and a daughter named Lawanbai. Hadji Abdula Malang was engaged in farming, tilling the land that was Aida's dowry (mahr or majar). Thereafter, he bought a parcel of land in Sousa, Cotabato. Hadji Abdula and Aida already had two children when he married for the second time another Muslim named Jubaida Kado in Kalumamis, Talayan, Maguindanao. No child was born out of Hadji Abdula's second marriage. When Aida, the first wife, was pregnant with their fourth child, Hadji Abdula divorced her.

In 1965, Hadji Abdula married another Muslim, Nayo H. Omar but they were childless. Thereafter, Hadji Abdula contracted marriage with Hadji Mabai (Mabay) H. Adziz in Kalumamis, Talayan, Maguindanao and soon they had a daughter named; Fatima (Kueng). Hadji Abdula and Hadji Mabai stayed in that place to farm while Hadji Abdula engaged in the business of buying and selling of rice, corn and other agricultural products. Not long after, Hadji Abdula married three other Muslim women named Saaga, Mayumbai and Sabai but he eventually divorced them.

Hadji Abdula then migrated to Tambunan where, in 1972, he married petitioner Neng "Kagui Kadiguia" Malang, his fourth wife, excluding the wives he had divorced. They established residence in Cotabato City but they were childless. For a living, they relied on farming and on the business of buying and selling of agricultural products. Hadji Abdula acquired vast tracts of land in Sousa and Talumanis, Cotabato City, some of which were cultivated by tenants. He deposited money in such banks as United Coconut Planters Bank, Metrobank and Philippine Commercial and Industrial Bank.

On December 18, 1993, while he was living with petitioner in Cotabato City, Hadji Abdula died without leaving a will. On January 21, 1994, petitioner filed with the Shari'a District Court in Cotabato City a petition for the settlement of his estate with

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a prayer that letters of administration be issued in the name of her niece, Tarhata Lauban.

Petitioner claimed in that petition that she was the wife of Hadji Abdula; that his other legal heirs are his three children named Teng Abdula, Keto Abdula and Kueng Malang, and that he left seven (7) parcels of land, five (5) of which are titled in Hadji Abdula's name "married to Neng P. Malang," and a pick-up jeepney.

On February 7, 1994, the Shari'a District Court ordered the publication of the petition.[1] After such publication[2] or on March 16, 1994, Hadji Mohammad Ulyssis Malang ("Hadji Mohammad," for brevity), the eldest son of Hadji Abdula, filed his opposition to the petition. He alleged among other matters that his father's surviving heirs are as follows: (a) Jubaida Malang, surviving spouse; (b) Nayo Malang, surviving spouse; (c) Mabay Malang, surviving spouse; (d) petitioner Neng Malang, surviving spouse; (e) oppositor Hadji Mohammad Ulyssis Malang who is also known as "Teng Abdula," son; (f) Hadji Ismael Malindatu Malang, also known as "Keto Abdula," son, (g) Fatima Malang, also known as "Kueng Malang," daughter; (h) Datulna Malang, son, and (i) Lawanbai Malang, daughter. Oppositor Hadji Mohammad Ulyssis Malang alleged that since he and his brother, Hadji Ismael Malindatu Malang, had helped their father in his business, then they were more competent to be administrators of his estate.[3]

On March 30, 1994, Jubaida Malang, Ismael Malindatu Malang, Nayo Malang, Fatima Malang, Mabay Malang, Datulna Malang and Lawanbai Malang filed an opposition to the petition, adopting as their own the written opposition of Hadji Mohammad.[4]

On April 7, 1994, the Shari'a District Court issued an Order appointing Hadji Mohammad administrator of his father's

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[1] Record, p. 14.

[2] Exhs. C-1, D-1 & E-1.

[3] Record, p. 20.

[4] *Ibid.*, p. 28.

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properties outside Cotabato City. The same order named petitioner and Hadji Ismael Malindatu Malang as joint administrators of the estate in Cotabato City. Each administrator was required to post a bond in the amount of ₱100,000.00.[5] On April 13, 1994, letters of administration were issued to Hadji Mohammad after he had posted the required bond. He took his oath on the same day.[6] The following day, Hadji Ismael and petitioner likewise filed their respective bonds and hence, they were allowed to take their oath as administrators.[7]

On April 25, 1994 and May 3, 1994, petitioner filed two motions informing the court that Hadji Abdula had outstanding deposits with nine (9) major banks.[8] Petitioner prayed that the managers of each of those banks be ordered to submit a bank statement of the outstanding deposit of Hadji Abdula.[9] The Shari'a District Court having granted the motions,[10] Assistant Vice President Rockman O. Sampuha of United Coconut Planters Bank informed the court that as of April 24, 1994, the outstanding deposit of Hadji Abdula amounted to one million five hundred twenty thousand four hundred pesos and forty-eight centavos (₱1,520,400.48).[11] The Senior Manager of the Cotabato branch of Metrobank also certified that as of December 18, 1993, "Hadji Abdula Malang or Malindatu Malang" had on savings deposit the balance of three hundred seventy-eight thousand four hundred ninety-three pesos and 32/100 centavos (₱378,493.32).[12] PCIB

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[5] *Ibid.*, p. 31.

[6] *Ibid.*, pp. 32-36.

[7] *Ibid.*, pp. 37-49.

[8] These banks were allegedly: (1) United Coconut Planters Bank; (2) Solidbank; (3) Far East Bank and Trust Company; (4) Philippine Commercial and Industrial Bank; (5) Bank of the Philippine Islands; (6) Metrobank; (7) Philippine National Bank; (8) Land Bank of the Philippines, and (9) Development Bank of the Philippines.

[9] Record, pp. 50 & 59.

[10] *Ibid.*, p. 52 & 61.

[11] *Ibid.*, p. 220 (Exh. CC).

[12] *Ibid.*, p. 219 (Exh. BB).

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likewise issued a certification that Hadji Abdula had a balance of eight hundred fifty pesos (₱850.00) in his current account as of August 11, 1994.[13]

During the pendency of the case, petitioner suffered a congestive heart failure that required immediate medical treatment. On May 5, 1994, she filed a motion praying that on account of her ailment, she be allowed to withdraw from UCPB the amount of three hundred thousand pesos (₱300,000.00) that shall constitute her advance share in the estate of Hadji Abdula.[14] After due hearing, the Shari'a District Court allowed petitioner to withdraw the sum of two hundred fifty thousand pesos (₱250,000.00).[15]

On May 12, 1994, the Shari'a District Court required petitioner and Hadji Ismael as joint administrators to submit an inventory and appraisal of all properties of Hadji Abdula.[16] In compliance therewith, Hadji Ismael submitted an inventory showing that in Cotabato City, Hadji Abdula had seven (7) residential lots with assessed value ranging from ₱5,020.00 to ₱25,800.00, an agricultural land with assessed value of P860.00, three (3) one-storey residential buildings, and one (1) two-storey residential building.[17] All these properties were declared for taxation purposes in Hadji Abdula's name.

For her part, petitioner submitted an inventory showing that Hadji Abdula "married to Neng Malang" had seven (7) residential lots with a total assessed value of ₱243,840.00 in Cotabato City, an Isuzu pick-up jeepney valued at ₱30,000.00 and bank deposits.[18]

In the Memorandum that she filed with the Shari'a District Court, petitioner asserted that all the properties located in

[13] *Ibid.*, p. 221 (Exh. DD).

[14] *Ibid.*, pp. 62-63.

[15] *Ibid.*, p. 102-103.

[16] *Ibid.*, p. 97.

[17] *Ibid*, pp. 123-126.

[18] *Ibid.*, p. 108.

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Cotabato City, including the vehicle and bank deposits, were conjugal properties in accordance with Article 160 of the Civil Code and Article 116 of the Family Code while properties located outside of Cotabato City were exclusive properties of the decedent.[19]

On the other hand, the oppositors contended in their own Memorandum that all the properties left by Hadji Abdula were his exclusive properties for various reasons. First, Hadji Abdula had no conjugal partnership with petitioner because his having contracted eight (8) marriages with different Muslim women was in violation of the Civil Code that provided for a monogamous marriage; a conjugal partnership presupposes a valid civil marriage, not a bigamous marriage or a common-law relationship. Second, the decedent adopted a "complete separation of property regime" in his marital relations; while his wives Jubaida Kado, Nayo Hadji Omal and Mabay Ganap Hadji Adzis contributed to the decedent's properties, there is no evidence that petitioner had contributed funds for the acquisition of such properties. Third, the presumption that properties acquired during the marriage are conjugal properties is inapplicable because at the time he acquired the properties, the decedent was married to four (4) women. Fourth, the properties are not conjugal in nature notwithstanding that some of these properties were titled in the name of the decedent "married to Neng Malang" because such description is not conclusive of the conjugal nature of the property. Furthermore, because petitioner admitted in her verified petition that the properties belonged "to the estate of decedent," she was estopped from claiming, after formal offer of evidence, that the properties were conjugal in nature just because some of the properties were titled in Hadji Abdula's name "married to Neng Malang." Fifth, if it is true that the properties were conjugal properties, then these should have been registered in the names of both petitioner and the decedent.[20]

In its Order of September 26, 1994, the Shari'a District Court presided by Judge Corocoy D. Moson held that there was no

[19] *Ibid.*, pp. 229-232.

[20] *Ibid.*, pp. 222-228.

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conjugal partnership of gains between petitioner and the decedent primarily because the latter married eight times. The Civil Code provision on conjugal partnership cannot be applied if there is more than one wife because "conjugal partnership presupposes a valid civil marriage, not a plural marriage or a common-law relationship." The court further found that the decedent was "the chief, if not the sole, breadwinner of his families" and that petitioner did not contribute to the properties unlike the other wives named Jubaida, Nayo and Mabay. The description "married to Neng Malang" in the titles to the real properties is no more than that — the description of the relationship between petitioner and the decedent. Such description is insufficient to prove that the properties belong to the conjugal partnership of gains. The court stated:

> In the instant case, decedent had four (4) wives at the time he acquired the properties in question. To sustain the contention of the petitioner that the properties are her conjugal property with the decedent is doing violence to the provisions of the Civil Code. Be it noted that at the time of the marriage of the petitioner with the decedent, there were already three (3) existing marriages. Assuming for the moment that petitioner and the decedent had agreed that the property regime between them will be governed by the regime of conjugal partnership property, that agreement is null and void for it is against the law, public policy, public order, good moral(s) and customs.
>
> Under Islamic law, the regime of property relationship is complete separation of property, in the absence of any stipulation to the contrary in the marriage settlements or any other contract (Article 38, P.D. 1083). There being no evidence of such contrary stipulation or contract, this Court concludes as it had begun, that the properties in question, both real and personal, are not conjugal, but rather, exclusive property of the decedent.[21]

Thus, the Shari'a District Court held that the Islamic law should be applied in the distribution of the estate of Hadji Abdula and accordingly disposed of the case as follows:

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[21] Order of September 26, 1994, pp. 12-13; *Rollo,* pp. 25-56.

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WHEREFORE, premises considered, the Court orders the following:

1) That the estate shall pay the corresponding estate tax, reimburse the funeral expenses in the amount of ₱50,000.00, and the judicial expenses in the amount of ₱2,040.80;

2) That the net estate, consisting of real and personal properties, located in Talayan, Maguindanao and in Cotabato City, is hereby ordered to be distributed and adjudicated as follows:

a)	Jubaida Kado Malang	2/64	of the estate
b)	Nayo Omar Malang	2/64	- do -
c)	Mabai Aziz Malang	2/64	- do -
d)	Neng "Kagui Kadiguia" Malang	2/64	- do -
e)	Mohammad Ulyssis Malang	14/64	- do -
f)	Ismael Malindatu Malang	14/64	- do -
g)	Datulna Malang	14/64	- do -
h)	Lawanbai Malang	7/64	- do -
i)	Fatima (Kueng) Malang	7/64	- do -
	Total	64/64	

3) That the amount of ₱250,000.00 given to Neng "Kagui Kadiguia" Malang by way of advance be charged against her share and if her share is not sufficient, to return the excess; and

4) That the heirs are hereby ordered to submit to this court their Project of Partition for approval, not later than three (3) months from receipt of this order.

SO ORDERED.

On October 4, 1994, petitioner filed a motion for the reconsideration of that Order. The oppositors objected to that motion. On January 10, 1995; the Shari'a District Court denied petitioner's motion for reconsideration.[22] Unsatisfied, petitioner filed a notice of appeal.[23] However, on January 19, 1995, she filed a manifestation withdrawing the notice of appeal on the strength of the following provisions of P.D. No. 1083:

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[22] *Ibid,* pp. 280-281.

[23] *Ibid.*, p. 282.

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Art. 145. *Finality of Decisions.* — The decisions of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution.

Petitioner accordingly informed the court that she would be filing "an original action of *certiorari* with the Supreme Court."[24]

On March 1, 1995, petitioner filed the instant petition for *certiorari* with preliminary injunction and/or restraining order. She contends that the Shari'a District Court gravely erred in: (a) ruling that when she married Hadji Abdula Malang, the latter had three existing marriages with Jubaida Kado Malang, Nayo Omar Malang and Mabay Ganap Malang and therefore the properties acquired during her marriage could not be considered conjugal, and (b) holding that said properties are not conjugal because under Islamic Law, the regime of relationship is complete separation of property, in the absence of stipulation to the contrary in the marriage settlement or any other contract.[25]

As petitioner sees it, "the law applicable on issues of marriage and property regime is the New Civil Code," under which all property of the marriage is presumed to belong to the conjugal partnership. The Shari'a Court, meanwhile, viewed the Civil Code provisions on conjugal partnership as incompatible with plural marriage, which is permitted under Muslim law, and held the applicable property regime to be complete separation of property under P.D. 1083.

Owing to the complexity of the issue presented, and the fact that the case is one of first impression — this is a singular situation where the issue on what law governs the property regime of a Muslim marriage celebrated prior to the passage of the Muslim Code has been elevated from a Shari'a court for the Court's resolution — the Court decided to solicit the opinions

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[24] *Ibid.*, p. 284.

[25] Petition, pp. 5 & 10.

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of two *amici curiae*, Justice Ricardo C. Puno[26] and former Congressman Michael O. Mastura.[27] The Court extends its warmest thanks to the *amici curiae* for their valuable inputs in their written memoranda[28] and in the hearing of June 27, 2000.

Resolution of the instant case is made more difficult by the fact that very few of the pertinent dates of birth, death, marriage and divorce are established by the record. This is because, traditionally, Muslims do not register acts, events or judicial decrees affecting civil status.[29] It also explains why the evidence in the instant case consisted substantially of oral testimonies.

What is not disputed is that: Hadji Abdula contracted a total of eight marriages, counting the three which terminated in divorce; all eight marriages were celebrated during the effectivity of the Civil Code and before the enactment of the Muslim Code; Hadji Abdula divorced four wives — namely, Aida, Saaga, Mayumbai and Sabai — all divorces of which took place before the enactment of the Muslim Code; and, Hadji Abdula died on December 18, 1993, after the Muslim Code and Family Code took effect, survived by four wives (Jubaida, Nayo, Mabay and Neng) and five children, four of whom he begot with Aida and one with Mabay. It is also clear that the following laws were in force, at some point or other, during the marriages of Hadji Abdula: the Civil Code, which took effect on August 30, 1950;

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[26] Retired Justice of the Court of Appeals and former Minister of Justice, author, noted civil law professor, and law practitioner. He was also a member of the Family Code Revision Committee.

[27] Former Congressman, law practitioner, and member of the Presidential Code Commission which reviewed P.D. 1083.

[28] Justice Puno's Compliance by *Amicus Curiae* was submitted on June 27, 2000 while Congressman Mastura's Memorandum was submitted on March 29, 2000.

[29] The registration of marriages, divorces, revocations of divorce and conversions into Islam is now required under Title VI (Civil Registry) of P.D. 1083.

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Republic Act No. 394 ("R.A. 394"), authorizing Muslim divorces, which was effective from June 18, 1949 to June 13, 1969; the Muslim Code, which took effect February 4, 1977; and the Family Code, effective August 3, 1988.

Proceeding upon the foregoing, the Court has concluded that the record of the case is simply inadequate for purposes of arriving at a fair and complete resolution of the petition. To our mind, any attempt at this point to dispense with the basic issue given the scantiness of the evidence before us could result in grave injustice to the parties in this case, as well as cast profound implications on Muslim families similarly or analogously situated to the parties herein. Justice and accountability dictate a remand; trial must reopen in order to supply the factual gaps or, in Congressman Mastura's words, "missing links," that would be the bases for judgment and accordingly, allow respondent court to resolve the instant case. In ordering thus, however, we take it as an imperative on our part to set out certain guidelines in the interpretation and application of pertinent laws to facilitate the task of respondent court.

It will also be recalled that the main issue presented by the petition — concerning the property regime applicable to two Muslims married prior to the effectivity of the Muslim Code — was interposed in relation to the settlement of the estate of the deceased husband. Settlement of estates of Muslims whose civil acts predate the enactment of the Muslim Code may easily result in the application of the Civil Code and other personal laws, thus convincing the Court that it is but propitious to go beyond the issue squarely presented and identify such collateral issues as are required to be resolved in a settlement of estate case. As *amicus curiae* Congressman Mastura puts it, the Court does not often come by a case as the one herein, and jurisprudence will be greatly enriched by a discussion of the "watershed of collateral issues" that this case presents.[30]

The Court has identified the following collateral issues, which we hereby present in question form: (1) What law governs the

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[30] TSN, Oral Argument of July 27, 2000, p. 26.

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validity of a Muslim marriage celebrated under Muslim rites before the effectivity of the Muslim Code? (2) Are multiple marriages celebrated before the effectivity of the Muslim Code valid? (3) How do the Court's pronouncements in *People vs. Subano*, 73 Phil. 692 (1942), and *People vs. Dumpo*, 62 Phil. 246 (1935), affect Muslim marriages celebrated before the effectivity of the Muslim Code? (4) What laws govern the property relationship of Muslim multiple marriages celebrated before the Muslim Code? (5) What law governs the succession to the estate of a Muslim who died after the Muslim Code and the Family Code took effect? (6) What laws apply to the dissolution of property regimes in the cases of multiple marriages entered into before the Muslim Code but dissolved (by the husband's death) after the effectivity of the Muslim Code? and (7) Are Muslim divorces effected before the enactment of the Muslim Code valid?

The succeeding guidelines, which derive mainly from the Compliance of *amicus curiae* Justice Puno, are hereby laid down by the Court for the reference of respondent court, and for the direction of the bench and bar:

First Collateral Issue: The Law[s] Governing Validity of Muslim Marriages Celebrated Before the Muslim Code

The time frame in which all eight marriages of Hadji Abdula were celebrated was during the effectivity of the Civil Code which, accordingly, governs the marriages. Article 78 of the Civil Code[31] recognized the right of Muslims to contract marriage in accordance with their customs and rites, by providing that—

> Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.
>
> However, thirty years after the approval of this Code, all marriages performed between Muslims or other non-Christians shall be solemnized

[31] As amended by Republic Act No. 6268, which was approved on June 19, 1971 and was made to take effect as of June 18, 1969.

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in accordance with the provisions of this Code. But the President of the Philippines, upon recommendation of the Commissioner of National Integration, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Muslims and non-Christian inhabitants of any of the non-Christian provinces.

Notably, before the expiration of the thirty-year period after which Muslims are enjoined to solemnize their marriages in accordance with the Civil Code, P.D. 1083 or the Muslim Code was passed into law. The enactment of the Muslim Code on February 4, 1977 rendered nugatory the second paragraph of Article 78 of the Civil Code which provides that marriages between Muslims thirty years after the approval of the Civil Code shall be solemnized in accordance with said Code.

Second and Third Collateral Issues: The Validity of Muslim Multiple Marriages Celebrated Before the Muslim Code; The Effect of People vs. Subano and People vs. Dumpo

Prior to the enactment of P.D. 1083, there was no law in this jurisdiction which sanctioned multiple marriages.[32] It is also not to be disputed that the only law in force governing marriage relations between Muslims and non-Muslims alike was the Civil Code of 1950.

The Muslim Code, which is the first comprehensive codification[33] of Muslim personal laws,[34] also provides in respect of acts that transpired prior to its enactment:

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[32] Article 27 of P.D. 1083 now provides: "Notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases."

[33] The Explanatory Note to the Draft Muslim Code states: "This (Code) is the first fundamental concept that the Muslim legal system breathes into the Philippine legal system which has recognized to the present only the application of jural rules of mainly non-Muslim origin."

[34] Includes all laws on personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses. Muslim Code, Art. 7, par. (i).

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Art. 186. *Effect of code on past acts.* — (1) Acts executed prior to the effectivity of this Code shall be governed by the laws in force at the time of their execution, and nothing herein except as otherwise specifically provided, shall affect their validity or legality or operate to extinguish any right acquired or liability incurred thereby.

The foregoing provisions are consistent with the principle that all laws operate prospectively, unless the contrary appears or is clearly, plainly and unequivocably expressed or necessarily implied;[35] accordingly, every case of doubt will be resolved against the retroactive operation of laws.[36] Article 186 aforecited enunciates the general rule of the Muslim Code to have its provisions applied prospectively, and implicitly upholds the force and effect of a pre-existing body of law, specifically, the Civil Code — in respect of civil acts that took place before the Muslim Code's enactment.

Admittedly, an apparent antagonism arises when we consider that what the provisions of the Civil Code contemplate and nurture is a monogamous marriage. "Bigamous or polygamous marriages" are considered void and inexistent from the time of their performance.[37] The Family Code which superseded the Civil Code provisions on marriage emphasizes that a subsequent marriage celebrated before the registration of the judgment declaring a prior marriage void shall likewise be void.[38] These provisions illustrate that the marital relation perceived by the Civil Code is one that is monogamous, and that subsequent marriages entered into by a person with others while the first one is subsisting is by no means countenanced.

Thus, when the validity of Muslim plural marriages celebrated before the enactment of the Muslim Code was touched upon

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[35] *Commissioner vs. Lingayen Gulf Electric Power Co., Inc.*, 164 SCRA 27; *Castro vs. Collector of Internal Revenue*, 6 SCRA 886; *Ichiong vs. Hernandez*, 101 Phil. 1155.

[36] *Segovia vs. Noel,* 47 Phil. 220.

[37] Civil Code, Art. 80, par. 4.

[38] Family Code, Arts. 52, 53.

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in two criminal cases, the Court applied the perspective in the Civil Code that only one valid marriage can exist at any given time.

In *People vs. Subano, supra*, the Court convicted the accused of homicide, not parricide, since —

> (f)rom the testimony of Ebol Subano, father of the deceased, it appears that the defendant has three wives and that the deceased was the last in point of time. Although the practice of polygamy is approved by custom among these non-Christians, polygamy, however, is not sanctioned by the Marriage Law,[39] which merely recognizes tribal marriage rituals. The deceased, under our law, is not thus the lawful wife of the defendant and this precludes conviction for the crime of parricide.

In *People vs. Dumpo, supra,* Mora Dumpo was prosecuted for bigamy when, legally married to Moro Hassan, she allegedly contracted a second marriage with Moro Sabdapal. The Court acquitted her on the ground that it was not duly proved that the alleged second marriage had all the essential requisites to make it valid were it not for the subsistence of the first marriage. As it appears that the consent of the bride's father is an indispensable requisite to the validity of a Muslim marriage, and as Mora Dumpo's father categorically affirmed that he did not give his consent to her union with Moro Sabdapal, the Court held that such union could not be a marriage otherwise valid were it not for the existence of the first one, and resolved to acquit her of the charge of bigamy.

The ruling in *Dumpo* indicates that, had it been proven as a fact that the second marriage contained all the essential requisites to make it valid, a conviction for bigamy would have prospered.[40]

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[39] The Marriage Law, approved on December 4, 1929, preceded the Civil Code of 1950 and was the governing law when *People vs. Subano* was promulgated.

[40] This is significantly changed by the enactment of P.D. 1083, Article 180 of which provides. "The provisions of the Revised Penal Code relative to the crime of bigamy shall not apply to a person married in accordance with the provisions of this (Muslim) Code or, before its effectivity, under Muslim law."

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Fourth Collateral Issue: Law(s) Governing Property Relations of Muslim Marriages Celebrated Before the Muslim Code

This is the main issue presented by the instant petition. In keeping with our holding that the validity of the marriages in the instant case is determined by the Civil Code, we hold that it is the same Code that determines and governs the property relations of the marriages in this case, for the reason that at the time of the celebration of the marriages in question the Civil Code was the only law on marriage relations, including property relations between spouses, whether Muslim or non-Muslim. Inasmuch as the Family Code makes substantial amendments to the Civil Code provisions on property relations, some of its provisions are also material, particularly to property acquired from and after August 3, 1988.

Which law would govern depends upon: (1) when the marriages took place; (2) whether the parties lived together as husband and wife, and (3) when and how the subject properties were acquired.

Following are the pertinent provisions of the Civil Code:

Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code shall govern the property relations between husband and wife.

Art. 135. All property brought by the wife to the marriage, as well as all property she acquires during the marriage, in accordance with Article 148, is paraphernal.

Art. 136. The wife retains the ownership of the paraphernal property.

Art. 142. By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage.

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Art. 143. All property of the conjugal partnership of gains is owned in common by the husband and wife.

The Civil Code also provides in Article 144:

When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership.

In a long line of cases, this Court has interpreted the co-ownership provided in Article 144 of the Civil Code to require that the man and woman living together as husband and wife without the benefit of marriage or under a void marriage must not in any way be incapacitated to marry.[41] Situating these rulings to the instant case, therefore, the co-ownership contemplated in Article 144 of the Civil Code cannot apply to Hadji Abdula's marriages celebrated subsequent to a valid and legally existing marriage, since from the point of view of the Civil Code Hadji Abdula is not capacitated to marry. However, the wives in such marriages are not precluded from proving that property acquired during their cohabitation with Hadji Abdula is their *exclusive* property, respectively.[42] Absent such proof, however, the presumption is that property acquired during the subsistence of a valid marriage — and in the Civil Code, there can only be one validly existing marriage at any given time — is conjugal property of such subsisting marriage.[43]

With the effectivity of the Family Code on August 3, 1988, the following provisions of the said Code are pertinent:

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[41] *Adriano vs. Court of Appeals,* GR. No. 124118, March 27, 2000; *Belcodero vs. Court of Appeals,* 227 SCRA 303; *Juaniza vs. Jose,* 89 SCRA 306; *Camporodendo vs. Aznar,* 102 Phil. 1055; *Osmeña vs. Rodriguez,* 54 O.G. 5526; *Malajacan vs. Rubi,* 42 O.G. 5576.

[42] In *Osmeña vs. Rodriguez, supra,* the Court ruled that a parcel of land acquired in the subsistence of a prior valid marriage did not belong to the conjugal estate of such marriage, in the face of evidence submitted by the common-law wife that such land was her exclusive property.

[43] Civil Code, Art. 160; *Adriano vs. Court of Appeals, supra*; *Belcodero vs. Court of Appeals, supra.*

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Art. 147. When a man and a woman who are capacitated to marry each other live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition of the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts *inter vivos* of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of the cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default or of waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

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The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

It will be noted that while the Civil Code merely requires that the parties "live together as husband and wife" the Family Code in Article 147 specifies that they "live *exclusively* with each other as husband and wife." Also, in contrast to Article 144 of the Civil Code as interpreted by jurisprudence, Article 148 of the Family Code allows for co-ownership in cases of cohabitation where, for instance, one party has a pre-existing valid marriage, provided that the parties prove their "actual joint contribution of money, property, or industry" and only to the extent of their proportionate interest therein. The rulings in *Juaniza vs. Jose*, 89 SCRA 306, *Camporodendo vs. Garcia*, 102 Phil. 1055, and related cases are embodied in the second paragraph of Article 148, which declares that the share of the party validly married to another shall accrue to the property regime of such existing marriage.

Fifth and Sixth Collateral Issues: Law(s) on Succession and Dissolution of Property Regimes

Hadji Abdula died intestate on December 16, 1993. Thus, it is the Muslim Code which should determine the identification of the heirs in the order of intestate succession and the respective shares of the heirs.

Meanwhile, the status and capacity to succeed on the part of the individual parties who entered into each and every marriage ceremony will depend upon the law in force *at the time of the performance of the marriage rite.*

The status and capacity to succeed of the children will depend upon the law in force *at the time of conception or birth* of the child. If the child was conceived or born during the period covered by the governance of the Civil Code, the Civil Code provisions on the determination of the legitimacy or illegitimacy of the child would appear to be in point. Thus, the Civil Code provides:

Art. 255. Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following

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its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

This physical impossibility may be caused:

(1) By the impotence of the husband;

(2) By the fact that the husband and wife were living separately, in such a way that access was not possible;

(3) By the serious illness of the husband.

Art. 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress.

If the child was conceived or born during the period covered by the governance of the Muslim Code, *i.e.,* from February 4, 1977 up to the death of Hadji Abdula on December 18, 1993, the Muslim Code determines the legitimacy or illegitimacy of the child. Under the Muslim Code:

Art. 58. *Legitimacy, how established.* — Legitimacy of filiation is established by the evidence of valid marriage between the father and the mother at the time of the conception of the child.

Art. 59. *Legitimate children.* —

(1) Children conceived in lawful wedlock shall be presumed to be legitimate. Whoever claims illegitimacy of or impugns such filiation must prove his allegation.

(2) Children born after six months following the consummation of marriage or within two years after the dissolution of the marriage shall be presumed to be legitimate. Against this presumption no evidence shall be admitted other than that of physical impossibility of access between the parents at or about the time of the conception of the child.

Art. 60. *Children of subsequent marriage.* — Should the marriage be dissolved and the wife contracts another marriage after the expiration of her '*idda*, the child born within six months from the dissolution of

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the prior marriage shall be presumed to have been conceived during the former marriage, and if born thereafter, during the latter.

Art. 61. *Pregnancy after dissolution.* — If, after the dissolution of marriage, the wife believes that she is pregnant by her former husband, she shall, within thirty days from the time she became aware of her pregnancy, notify the former husband or his heirs of that fact. The husband or his heirs may ask the court to take measures to prevent a simulation of birth.

Upon determination of status and capacity to succeed based on the foregoing provisions, the provisions on legal succession in the Muslim Code will apply. Under Article 110 of the said Code, the sharers to an inheritance include:

(a) The husband, the wife;
(b) The father, the mother, the grandfather, the grandmother;
(c) The daughter and the son's daughter in the direct line;
(d) The full sister, the consanguine sister, the uterine sister and the uterine brother.

When the wife survives with a legitimate child or a child of the decedent's son, she is entitled to one-eighth of the hereditary estate; in the absence of such descendants, she shall inherit one-fourth of the estate.[44] The respective shares of the other sharers, as set out in Article 110 abovecited, are provided for in Articles 113 to 122 of P.D. 1083.

Seventh Collateral Issue. Muslim Divorces Before the Effectivity of the Muslim Code

R.A. 394 authorized absolute divorce among Muslims residing in non-Christian provinces, in accordance with Muslim custom, for a period of 20 years from June 18, 1949 (the date of approval of R.A. 394) to June 13, 1969.[45] Thus, a Muslim divorce under R.A. 394 is valid if it took place from June 18, 1949 to June 13, 1969.

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[44] Art. 112, Muslim Code.

[45] The 20-year period expired on June 13, 1969, considering that there were five leap years (1952, 1956, 1960, 1964 and 1968) since the approval of R.A. 394 in 1949.

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From the seven collateral issues that we discussed, we identify four corollary issues as to further situate the points of controversy in the instant case for the guidance of the lower court. Thus:

1. *Which of the several marriages was validly and legally existing at the time of the opening of the succession of Hadji Abdula when he died in 1993*? The validly and legally existing marriage would be that marriage which was celebrated at a time when there was no other subsisting marriage standing undissolved by a valid divorce or by death. This is because all of the marriages were celebrated during the governance of the Civil Code, under the rules of which only one marriage can exist at any given time.

Whether or not the marriage was validly dissolved by a Muslim divorce depends upon the time frame and the applicable law. A Muslim divorce under R.A. No. 394 is valid if it took place from June 18, 1949 to June 13, 1969, and void if it took place from June 14, 1969.[46]

2. *There being a dispute between the petitioner and the oppositors as regards the heirship of the children begotten from different marriages, who among the surviving children are legitimate and who are illegitimate*? The children conceived and born of a validly existing marriage as determined by the first corollary issue are legitimate. The fact and time of conception or birth may be determined by *proof or presumption* depending upon the time frame and the applicable law.

3. *What properties constituted the estate of Hadji Abdula at the time of his death on December 18, 1993?* The estate of Hadji Abdula consists of the following:

a. Properties acquired during the existence of a valid marriage as determined by the first corollary issue are conjugal

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[46] Divorce provisions are now embodied in Articles 45 to 55 of the Muslim Code. Under Article 13 of the same Code, the provisions on divorce apply to marriages "wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with. Muslim law or this Code in any part of the Philippines."

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properties and should be liquidated and divided between the spouses under the Muslim Code, this being the law in force at the time of Hadji Abdula's death.

b. Properties acquired under the conditions prescribed in Article 144 of the Civil Code during the period August 30, 1950 to August 2, 1988 are conjugal properties and should be liquidated and divided between the spouses under the Muslim Code. However, the wives other than the lawful wife as determined under the first corollary issue may submit their respective evidence to prove that any of such property is theirs exclusively.

c. Properties acquired under the conditions set out in Articles 147 and 148 of the Family Code during the period from and after August 3, 1988 are governed by the rules on co-ownership.

d. Properties acquired under conditions not covered by the preceding paragraphs and obtained from the exclusive efforts or assets of Hadji Abdula are his exclusive properties.

4. *Who are the legal heirs of Hadji Abdula, and what are their shares in intestacy*? The following are Hadji Abdula's legal heirs: (a) the lawful wife, as determined under the first corollary issue, and (2) the children, as determined under the second corollary issue. The Muslim Code, which was already in force at the time of Hadji Abdula's death, will govern the determination of their respective shares.

As we have indicated early on, the evidence in this case is inadequate to resolve in its entirety the main, collateral and corollary issues herein presented and a remand to the lower court is in order. Accordingly, evidence should be received to supply the following proofs: (1) the exact dates of the marriages performed in accordance with Muslim rites or practices; (2) the exact dates of the dissolutions of the marriages terminated by death or by divorce in accordance with Muslim rites and practices, thus indicating which marriage resulted in a conjugal partnership under the criteria prescribed by the first, second, and third collateral issues and the first corollary issue; (3) the exact periods of actual cohabitation ("common life" under a "common roof") of each of the marriages during which time

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the parties lived together; (4) the identification of specific properties acquired during each of the periods of cohabitation referred to in paragraph 3 above, and the manner and source of acquisition, indicating joint or individual effort, thus showing the asset as owned separately, conjugally or in co-ownership; and (5) the identities of the children (legitimate or illegitimate) begotten from the several unions, the dates of their respective conceptions or births in relation to paragraphs 1 and 2 above, thereby indicating their status as lawful heirs.

Amicus curiae Congressman Mastura agrees that since the marriage of petitioner to decedent took place in 1972 the Civil Code is the law applicable on the issue of marriage settlement,[47] but espouses that customs or established practices among Muslims in Mindanao must also be applied with the force of law to the instant case.[48] Congressman Mastura's disquisition has proven extremely helpful in impressing upon us the background in which Islamic law and the Muslim Code need to be interpreted, particularly the interconnectedness of law and religion for Muslims[49] and the impracticability of a strict application of the Civil Code to plural marriages recognized under Muslim law.[50] Regrettably, the Court is duty-bound to resolve the instant case applying such laws and rights as are in existence at the time the pertinent civil acts took place. Corollarily, we are unable to supplant governing law with customs, albeit how widely observed. In the same manner, we cannot supply a perceived hiatus in P.D. 1083 concerning the distribution of property between divorced spouses upon one of the spouses' death.[51]

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[47] Memorandum of *Amicus Curiae*, p. 9.

[48] *Ibid.*, pp. 9, 27, 35-37, 42. Congressman Mastura particularly suggests that the Court take judicial notice of the principle of *sa-pancharian* on property acquired through the joint efforts of the husband and wife, judicially recognized by the Muslim courts of Malaysia and Singapore and also allegedly practiced as custom by Muslims in Mindanao.

[49] *Ibid.*, pp. 12, 18; TSN, Oral Argument, pp. 15-17.

[50] TSN, Oral Argument, p. 18 *et. seq.*

[51] TSN, Oral Argument, p. 24; Memorandum of *Amicus Curiae*, p. 14.

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WHEREFORE, the decision dated September 26, 1994 of the Fifth Shari'a District Court of Cotabato City in Special Proceeding No. 94-40 is *SET ASIDE,* and the instant petition is *REMANDED* for the reception of additional evidence and the resolution of the issues of the case based on the guidelines set out in this Decision.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Ynares-Santiago, and *De Leon Jr., JJ.*, concur.

EN BANC

[G.R. No. 127580. August 22, 2000]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZHENG BAI HUI @ CARLOS TAN TY and NELSON HONG TY @ SAO YU,** *accused-appellants.*

SYNOPSIS

In an information filed before the Regional Trial Court of Caloocan City, herein appellants were charged with the crime of selling 992.30 grams of Methamphetamine Hydrochloride or *shabu*. Upon arraignment, herein appellants pleaded not guilty to the crime charged. Trial ensued thereafter. After trial on the merits, the trial court rendered a decision finding the appellants guilty of the crime charged and accordingly sentenced them to suffer the penalty of death and ordered to pay a fine of ₱10,000,000.00. In view of the penalty imposed, the case was forwarded to the Court for automatic review. In this petition,