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and the interest thereon of ₱0.04, the Sheriff's Commission in the sum of ₱99.82, and the deficiency interest on the purchase price of the subject property, will not render the redemption in question null and void, it having been established that he has substantially complied with the requirements of the law to effect a valid redemption, with his tender of payment of the purchase price and the interest thereon within twelve (12) months from the date of the registration of the sale. This ruling is in obedience of the policy of the law to aid rather than to defeat the right of redemption.

WHEREFORE, in light of the foregoing, the Decision dated September 27, 2004 and the Resolution dated September 5, 2005 of the Court of Appeals in CA-G.R. CV No. 71294 are hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio, Acting C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.* and *Peralta, JJ.,* concur.

FIRST DIVISION

[G.R. No. 171175. October 9, 2009]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ARTURO F. DUCA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; AUTHORITY TO REPRESENT THE STATE IN APPEALS BEFORE THE COURT OF APPEALS AND THE

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[*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 720 dated October 5, 2009.

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SUPREME COURT IS SOLELY VESTED IN THE OFFICE OF THE SOLICITOR GENERAL.— The authority to represent the State in appeals of criminal cases before the CA and the Supreme Court is **solely** vested in the Office of the Solicitor General (OSG). Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code. Jurisprudence has been consistent on this point. In the recent case of *Cariño v. De Castro*, it was held: In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases. Likewise, in *City Fiscal of Tacloban v. Espina*, the Court made the following pronouncement: Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. However, when such criminal actions are brought to the Court of Appeals or this Court, it is the Solicitor General who must represent the People of the Philippines not the fiscal. And in *Labaro v. Panay*, the Court held: The OSG is the law office of the Government authorized by law to represent the Government or the People of the Philippines before us and before the Court of Appeals in all criminal proceedings, or before any court, tribunal, body, or commission in any matter, action, or proceeding which, in the opinion of the Solicitor General, affects the welfare of the people as the ends of justice may require.

2. ID.; ID.; ID.; IN CRIMINAL CASES, THE SOLICITOR GENERAL IS REGARDED AS THE APPELLATE COUNSEL OF THE REPUBLIC OF THE PHILIPPINES AND AS SUCH, SHOULD HAVE BEEN GIVEN THE OPPORTUNITY TO BE HEARD ON BEHALF OF THE PEOPLE; FAILURE OF THE COURT OF APPEALS TO REQUIRE THE SOLICITOR GENERAL TO FILE HIS

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COMMENT DEPRIVED THE PROSECUTION OF A FAIR OPPORTUNITY TO PROSECUTE AND PROVE ITS CASE.— [I]n criminal cases, as in the instant case, the Solicitor General is regarded as the appellate counsel of the People of the Philippines and as such, should have been given the opportunity to be heard on behalf of the People. The records show that the CA failed to require the Solicitor General to file his Comment on Duca's petition. A copy of the CA Resolution dated May 26, 2004 which required the filing of Comment was served upon Atty. Jaime Dojillo, Sr. (counsel for Duca), Atty. Villamor Tolete (counsel for private complainant Calanayan) and RTC Judge Crispin Laron. Nowhere was it shown that the Solicitor General had ever been furnished a copy of the said Resolution. The failure of the CA to require the Solicitor General to file his Comment deprived the prosecution of a fair opportunity to prosecute and prove its case.

3. ID.; ID.; ID.; A DECISION RENDERED WITHOUT DUE PROCESS IS VOID *AB INITIO* AND MAY BE ATTACKED DIRECTLY OR COLLATERALLY.— The State, like the accused, is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The doctrine consistently adhered to by this Court is that a decision rendered without due process is void *ab initio* and may be attacked directly or collaterally. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard. The assailed decision of the CA acquitting the respondent without giving the Solicitor General the chance to file his comment on the petition for review clearly deprived the State of its right to refute the material allegations of the said petition filed before the CA. The said decision is, therefore, a nullity. In *Dimatulac v. Villon*, we held: Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.

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4. ID.; ID.; ID.; THE COURT APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RESOLVING THE PETITION AND ACQUITTING RESPONDENT WITHOUT THE SOLICITOR GENERAL'S COMMENT.— Respondent appealed to the CA from the decision of the RTC *via* a petition for review under Rule 42 of the 1997 Rules of Court. The respondent was mandated under Section 1, Rule 42 of the Rules of Court to serve copies of his petition for review upon the adverse party, in this case, the People of the Philippines through the OSG. Respondent failed to serve a copy of his petition on the OSG and instead served a copy upon the Assistant City Prosecutor of Dagupan City. The service of a copy of the petition on the People of the Philippines, through the Prosecutor would be inefficacious for the reason that the Solicitor General is the sole representative of the People of the Philippines in appeals before the CA and the Supreme Court. The respondent's failure to have a copy of his petition served on the People of the Philippines, through the OSG, is a sufficient ground for the dismissal of the petition as provided in Section 3, Rule 42 of the Rules of Court. Thus, the CA has no other recourse but to dismiss the petition. However, the CA, instead of dismissing respondent's petition, proceeded to resolve the petition and even acquitted respondent without the Solicitor General's comment. We, thus, find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed decision.

5. ID.; ID.; ID.; THE FILING OF THE INSTANT PETITION FOR *CERTIORARI* IS JUSTIFIED CONSIDERING THAT THE APPELLATE COURT'S DECISION IS VOID FOR LACK OF DUE PROCESS.— [T]he Court notes that petitioner filed the instant petition for *certiorari* under Rule 65 without filing a motion for reconsideration with the CA. It is settled that the writ of *certiorari* lies only when petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, a motion for reconsideration, as a general rule, must be filed before the tribunal, board, or officer against whom the writ of *certiorari* is sought. Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors. This

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rule, however, is not without exceptions. In *National Housing v. Court of Appeals*, we held: However, in *Progressive Development Corporation v. Court of Appeals,* we held that while generally a motion for reconsideration must first be filed before resorting to *certiorari* in order to give the lower court an opportunity to rectify its errors, this rule admits of exceptions and is not intended to be applied without considering the circumstances of the case. The filing of a motion for reconsideration is not a condition *sine qua non* when the issue raised is purely one of law, **or where the error is patent or the disputed order is void**, or the questions raised on *certiorari* are the same as those already squarely presented to and passed upon by the lower court. The CA decision being void for lack of due process, the filing of the instant petition for *certiorari* without a motion for reconsideration is justified.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Dojillo Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure which seeks to set aside and annul the Decision[1] dated November 23, 2005 rendered by the Court of Appeals (CA) in *CA-G.R. CR No. 28312.*

The CA decision reversed the decision[2] of the Regional Trial Court (RTC) of Dagupan City, Branch 44, in *Criminal Case No. 2003-0194-D*[3] which affirmed an earlier decision[4] of the

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[1] Penned by Associate Justice Elvi John S. Asuncion (ret.), with Associate Justices Noel J. Tijam and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 17-24.

[2] CA *rollo*, pp. 39-43.

[3] Entitled "*People of the Philippines v. Arturo F. Duca.*"

[4] CA *rollo*, pp. 25-36.

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Municipal Circuit Trial Court of San Fabian-San Jacinto, Pangasinan, convicting respondent Arturo Duca of the crime of falsification under Article 171 of the Revised Penal Code.

The facts as found by the CA are quoted as follows:

It appears that Arturo Duca, together with his mother, Cecilia Duca, were charged of the crime of Falsification of Official Document defined and penalized under *Article 172*, in relation to *Article 171, paragraph 2* of the *Revised Penal Code* in an Information which reads:

> "That on or about December 10, 2001 in the Municipality of San Fabian, Province of Pangasinan, Philippines, within the jurisdiction of this Honorable Court, the said accused confederating together and mutually abiding each other, with intent to cause damage, did then and there, willfully, unlawfully and feloniously cause the preparation of a Declaration of Real Property over a bungalow type residential house covered by Property Index No. 013-32-027-01-116131 of the Municipal Assessor's Office of San Fabian, Pangasinan by making it appear that the signature appearing on the sworn statement of owner is that of Aldrin F. Duca when the truth of the matter is not because the latter was abroad at that time having arrived in the Philippines only on December 12, 2001, and it was accused Arturo F. Duca who affixed his own signature thereon to the damage and prejudice of the undersigned private complainant Pedro Calanayan."

Upon being arraigned, both the accused pleaded 'not guilty.' Then trial on the merits ensued.

The evidence for the prosecution shows that sometime in 1999, Pedro Calanayan (hereinafter "Calanayan"), private complainant herein, filed an action for ejectment and damages against Cecilia F. Duca, Ruel F. Duca, Arsenio F. Duca and Vangie F. Duca before the 4th Municipal Circuit Trial Court (MCTC) of San Fabian-San Jacinto, Pangasinan, docketed as Civil Case No. 960 (SF-99). The case was decided in favor of Calanayan. There being no appeal interposed by the aforesaid defendants, the said decision became final and executory. On November 22, 1999, a writ of execution was issued by the MCTC to enforce the decision. On February 29, 2000, the money judgment was likewise satisfied with the public auction of the lot owned by

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Cecilia Duca covered by TCT No. 233647. On March 1, 2000, a certificate of sale was issued in favor of Jocelyn Barque, the highest bidder in the auction sale.

On October 19, 2001, Cecilia Duca filed an action for the Declaration of Nullity of Execution and Damages with prayer for Writ of Injunction and Temporary Restraining order against Sheriff IV Vinez Hortaleza and Police Officers Roberto Vical, Alejandre Arevalo, Emilio Austria, Victor Quitales, Crisostomo Bonavente and Calanayan. The case was docketed as Civil Case No. 2000-0304-D.

When the said case was heard, Cecilia Duca testified to the effect that the house erected on the lot subject of the ejectment case is owned by her son Aldrin Duca. In support of such claim she presented Property Index No. 013-32-027-01-116131 (*Exhibit "B"*). At the back of the said exhibit is a sworn statement showing that the current and fair market value of the property, which is a bungalow, is ₱70,000.00 with the signature affixed on top of the typewritten name Aldrin F. Duca and subscribed and sworn to before Engr. Reynante Baltazar, the Municipal Assessor of San Fabian, Pangasinan, on December 10, 2001. The signature on top of the typewritten name Aldrin F. Duca is that of Arturo Duca. According to the prosecution, Arturo made it appear that the signature is that of his brother Aldrin who was out of the country at that time. Aldrin arrived in the Philippines only on December 12, 2001, as evidenced by a certification from the Bureau of Immigration, Manila. Arturo even made it appear that his Community Tax Certificate (CTC) No. 03841661 issued on December 10, 2001 is that of his brother Aldrin. That because of the misrepresentation, Cecilia and Arturo were able to mislead the RTC such that they were able to get a TRO against Sheriff Hortaleza and the policemen ordering them to stop from evicting the plaintiffs from the property in question.

Both accused denied that they falsified the signature of Aldrin Duca. Cecilia testified that she had no participation in the execution as she was in Manila at that time.

On the other hand, Arturo testified that the signature atop the name Aldrin Duca was his. However, he intersposed the defense that he was duly authorized by the latter to procure the said tax declaration.

On April 3, 2003, the MCTC of San Fabian-San Jacinto rendered a decision, dispositive portion of which reads as follows:

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"WHEREFORE, the Court finds the accused Arturo F. Duca guilty beyond reasonable doubt of the crime of falsification defined and penalized under Article 171 of the Revised Penal Code and hereby imposes upon said accused a prison term of two years, four months and one day to six (6) years of *Prision Correccional* and a fine of ₱2,000.00. Accused Cecilia is acquitted for lack of evidence.

The accused Arturo F. Duca is hereby ordered to pay to the complaining witness actual damages in the amount of ₱60,000.00 moral damages of ₱150,000.00 plus exemplary damages in the amount of ₱100,000.00 plus cost.

SO ORDERED."

Dissatisfied with the decision, Arturo Duca appealed. On March 24, 2004, the RTC of Dagupan City, Branch 44, rendered a decision, disposing the case as follows:

"WHEREFORE, the decision dated April 3, 2003 of the 4th Municipal Circuit Trial Court, San Fabian-San Jacinto, Pangasinan convicting accused Arturo F. Duca of the crime of Falsification defined and penalized under Article 171 of the Revised Penal Code and imposing upon said accused an imprisonment of two years, four months and one day to six (6) years of *Prision Correccional* and a fine of ₱2,000.00, and ordering him to pay to the complaining witness actual damages in the amount of ₱60,000.00, moral damages in the amount of ₱150,000.00 plus exemplary damages in the amount of ₱100,000.00 plus cost, is AFFIRMED.

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SO ORDERED."[5]

Aggrieved with the ruling of the RTC, Duca elevated the case to the CA *via* a petition for review. On November 23, 2005, the CA promulgated its assailed decision acquitting Duca of the crime charged and reversing the RTC decision. The CA held:

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[5] *Rollo*, pp. 17-20.

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However, the prosecution failed to establish the fact that Arturo was not duly authorized by Aldrin in procuring the tax declaration. On the contrary, the defense was able to establish that Arturo Duca was duly authorized by his brother Aldrin to secure a tax declaration on the house erected on the land registered under their mother's name.

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From the foregoing testimony, it can be deduced that Arturo could not have falsified the Tax Declaration of Real Property under Property Index No. 013-32-027-01-116B1 (Exhibit "B") by making it appear that Aldrin Duca, his brother, participated in the accomplishment of the said document since he was actually acting for and in behalf of the latter. It must be noted that as early as June 2001, Arturo has already been authorized by Aldrin; albeit verbally, to register the house in the latter's name as he cannot do it personally as he was abroad. This authority of Arturo was confirmed by the latter's execution of an Affidavit dated January 19, 2002 confirming the procurement of the said tax declaration (Exhibit "6") as well as a Special Power of attorney executed on June 17, 2002 (Exhibit "7"). Thus, what appeared to be defective from the beginning had already been cured so much so that the said document became valid and binding as an official act of Arturo.

If Arturo did not state in the Tax Declaration in what capacity he was signing, this deficiency was cured by Aldrin's subsequent execution of Exhibits "6" and "7".

The RTC's conclusion that the special power of attorney executed by Aldrin was a mere afterthought designed to extricateArturo from any criminal liability has no basis since from the very start, it has been duly established by the defense that Aldrin had verbally instructed Arturo to cause the execution of Exhibit "B" for the purpose of registering his house constructed on his mother's lot for taxation purposes.[6]

Hence, the instant petition anchored on this sole ground:

PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND HAD ACTED WITHOUT JURISDICTION WHEN IT RESOLVED PRIVATE RESPONDENT ARTURO F.

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[6] *Id.* at 22-24.

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DUCA'S APPEAL WITHOUT GIVING THE PEOPLE OF THE PHILIPPINES THROUGH THE OFFICE OF THE SOLICITOR GENERAL THE OPPORTUNITY TO BE HEARD THEREON.[7]

Petitioner argues that the prosecution was denied due process when the CA resolved the respondent's appeal without notifying the People of the Philippines, through the Solicitor General, of the pendency of the same and without requiring the Solicitor General to file his comment. Petitioner contends that once the case is elevated to the CA or this Court, it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People. Thus, the CA gravely abused its discretion when it acted on respondent's appeal without affording the prosecution the opportunity to be heard. Consequently, the decision of the CA acquitting respondent should be considered void for being violative of due process.

In his Comment,[8] respondent argues that there was no denial of due process because the prosecution was properly represented by the Office of the Provincial Prosecutor and a private prosecutor who handled the presentation of evidence under the control and supervision of the Provincial Prosecutor. Since the control and supervision conferred on the private prosecutor by the Provincial Prosecutor had not been withdrawn, the Solicitor General could not claim that the prosecution was not afforded a chance to be heard in the CA. According to the respondent, he should not be prejudiced by the Provincial Prosecutor's failure to inform the Solicitor General of the pendency of the appeal.

The petition is impressed with merit.

The authority to represent the State in appeals of criminal cases before the CA and the Supreme Court is **solely** vested in the Office of the Solicitor General (OSG). Section 35(1), Chapter 12, Title III of Book IV of the 1987 Administrative Code explicitly provides, *viz.*:

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[7] *Id.* at 6.

[8] *Id.* at 27-30.

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SEC. 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. x x x It shall have the following specific powers and functions:

(1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court and Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (emphasis supplied)

Jurisprudence has been consistent on this point. In the recent case of *Cariño v. De Castro*,[9] it was held:

In criminal proceedings on appeal in the Court of Appeals or in the Supreme Court, the authority to represent the People is vested solely in the Solicitor General. Under Presidential Decree No. 478, among the specific powers and functions of the OSG was to "represent the government in the Supreme Court and the Court of Appeals in all criminal proceedings." This provision has been carried over to the Revised Administrative Code particularly in Book IV, Title III, Chapter 12 thereof. Without doubt, the OSG is the appellate counsel of the People of the Philippines in all criminal cases.[10]

Likewise, in *City Fiscal of Tacloban v. Espina*,[11] the Court made the following pronouncement:

Under Section 5, Rule 110 of the Rules of Court all criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the fiscal. The fiscal represents the People of the Philippines in the prosecution of offenses before the trial courts at the metropolitan trial courts, municipal trial courts, municipal circuit trial courts and the regional trial courts. However, when such criminal actions are brought to the Court of Appeals or

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[9] G.R. No. 176084, April 30, 2008, 553 SCRA 688.

[10] *Id.* at 695.

[11] G.R. No. 83996, October 21, 1988, 166 SCRA 614.

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this Court, it is the Solicitor General who must represent the People of the Philippines not the fiscal.[12]

And in *Labaro v. Panay*,[13] the Court held:

> The OSG is the law office of the Government authorized by law to represent the Government or the People of the Philippines before us and before the Court of Appeals in all criminal proceedings, or before any court, tribunal, body, or commission in any matter, action, or proceeding which, in the opinion of the Solicitor General, affects the welfare of the people as the ends of justice may require.[14]

Indeed, in criminal cases, as in the instant case, the Solicitor General is regarded as the appellate counsel of the People of the Philippines and as such, should have been given the opportunity to be heard on behalf of the People. The records show that the CA failed to require the Solicitor General to file his Comment on Duca's petition. A copy of the CA Resolution[15] dated May 26, 2004 which required the filing of Comment was served upon Atty. Jaime Dojillo, Sr. (counsel for Duca), Atty. Villamor Tolete (counsel for private complainant Calanayan) and RTC Judge Crispin Laron. Nowhere was it shown that the Solicitor General had ever been furnished a copy of the said Resolution. The failure of the CA to require the Solicitor General to file his Comment deprived the prosecution of a fair opportunity to prosecute and prove its case.

Pertinently, *Saldana v. Court of Appeals, et al.*[16] ruled as follows:

> When the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated (*Uy vs. Genato*, L-37399, 57 SCRA 123 [May 29, 1974]; *Serino vs. Zoa*, L-33116, 40 SCRA 433 [Aug. 31, 1971]; *People vs. Gomez*,

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[12] *Id.* at 616.

[13] G.R. No. 129567, December 4, 1998, 299 SCRA 714.

[14] *Id.* at 720-721.

[15] CA *rollo*, pp. 47-48.

[16] G.R. No. 88889, October 11, 1990, 190 SCRA 396.

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L-22345, 20 SCRA 293 [May 29, 1967]; *People vs. Balisacan*, L-26376, 17 SCRA 1119 [Aug. 31, 1966]).

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Thus, the violation of the State's right to due process raises a serious jurisdiction issue (*Gumabon vs. Director of the Bureau of Prisons*, L-30026, 37 SCRA 420 [Jan. 30, 1971]) which cannot be glossed over or disregarded at will. Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction (*Aducayen vs. Flores*, L-30370, [May 25, 1973] 51 SCRA 78; *Shell Co. vs. Enage*, L-30111-12, 49 SCRA 416 [Feb. 27, 1973]). Any judgment or decision rendered notwithstanding such violation may be regarded as a 'lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head' (*Aducayen vs. Flores, supra*).[17]

The State, like the accused, is entitled to due process in criminal cases, that is, it must be given the opportunity to present its evidence in support of the charge. The doctrine consistently adhered to by this Court is that a decision rendered without due process is void *ab initio* and may be attacked directly or collaterally. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity to be heard.[18]

The assailed decision of the CA acquitting the respondent without giving the Solicitor General the chance to file his comment on the petition for review clearly deprived the State of its right to refute the material allegations of the said petition filed before the CA. The said decision is, therefore, a nullity. In *Dimatulac v. Villon*,[19] we held:

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally

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[17] *Id.* at 403.

[18] *Uy v. Court of Appeals*, G.R. No. 109557, November 29, 2000, 346 SCRA 246, 254-255.

[19] G.R. No. 127107, October 12, 1998, 297 SCRA 679.

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considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice; for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.[20]

Further, the CA should have been guided by the following provisions of Sections 1 and 3 of Rule 42 of the 1997 Rules of Court:

Sec. 1. *How appeal taken; time for filing.* — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and **furnishing** the Regional Trial Court and **the adverse party with a copy of the petition**. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to extend fifteen (15) days.

Sec. 3. *Effect of failure to comply with requirements*.— The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition **shall be sufficient ground for the dismissal thereof**. (emphasis supplied)

Respondent appealed to the CA from the decision of the RTC *via* a petition for review under Rule 42 of the 1997 Rules of Court. The respondent was mandated under Section 1,

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[20] *Id.* at 714.

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Rule 42 of the Rules of Court to serve copies of his petition for review upon the adverse party, in this case, the People of the Philippines through the OSG. Respondent failed to serve a copy of his petition on the OSG and instead served a copy upon the Assistant City Prosecutor of Dagupan City.[21] The service of a copy of the petition on the People of the Philippines, through the Prosecutor would be inefficacious for the reason that the Solicitor General is the sole representative of the People of the Philippines in appeals before the CA and the Supreme Court. The respondent's failure to have a copy of his petition served on the People of the Philippines, through the OSG, is a sufficient ground for the dismissal of the petition as provided in Section 3, Rule 42 of the Rules of Court. Thus, the CA has no other recourse but to dismiss the petition. However, the CA, instead of dismissing respondent's petition, proceeded to resolve the petition and even acquitted respondent without the Solicitor General's comment. We, thus, find that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed decision.

On a procedural matter, the Court notes that petitioner filed the instant petition for *certiorari* under Rule 65 without filing a motion for reconsideration with the CA. It is settled that the writ of *certiorari* lies only when petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, a motion for reconsideration, as a general rule, must be filed before the tribunal, board, or officer against whom the writ of *certiorari* is sought. Ordinarily, *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the respondent tribunal, to allow it an opportunity to correct its assigned errors.[22] This rule, however, is not without exceptions. In *National Housing v. Court of Appeals*,[23] we held:

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[21] CA *rollo*, p. 22.

[22] *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, G.R. No. 115104, October 12, 1998, 297 SCRA 602, 611.

[23] G.R. No. 144275, July 5, 2001, 360 SCRA 533.

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However, in *Progressive Development Corporation v. Court of Appeals*, we held that while generally a motion for reconsideration must first be filed before resorting to *certiorari* in order to give the lower court an opportunity to rectify its errors, this rule admits of exceptions and is not intended to be applied without considering the circumstances of the case. The filing of a motion for reconsideration is not a condition *sine qua non* when the issue raised is purely one of law, **or where the error is patent or the disputed order is void**, or the questions raised on *certiorari* are the same as those already squarely presented to and passed upon by the lower court.[24] (emphasis supplied)

The CA decision being void for lack of due process, the filing of the instant petition for *certiorari* without a motion for reconsideration is justified.

WHEREFORE, the petition for *certiorari* is hereby *GRANTED*. The assailed decision of the CA in *CA-G.R. CR No. 28312* is hereby *SET ASIDE* and the case is *REMANDED* to the CA for further proceedings. The CA is ordered to decide the case with dispatch.

SO ORDERED.

Corona (Acting Chairperson),[*] *Velasco, Jr.,*[**] *Brion,*[***] and *Bersamin, JJ.,* concur.

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[24] *Id.* at 537.

[*] Acting Chairperson as per Special Order No. 724.

[**] Additional member as per Special Order No. 719.

[***] Additional member as per Special Order No. 725-A.