Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

DEVIE ANN ISAGA FUERTES,
Petitioner,

- versus -

THE SENATE OF THE PHILIPPINES, HOUSE OF REPRESENTATIVES, DEPARTMENT OF JUSTICE (DOJ), DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), DEPARTMENT OF BUDGET AND MANAGEMENT, DEPARTMENT OF FINANCE, PEOPLE OF THE PHILIPPINES, THROUGH THE OFFICE OF THE SOLICITOR GENERAL (OSG), OFFICE OF THE CITY PROSECUTOR OF TAYABAS CITY (QUEZON PROVINCE), THE PRESIDING JUDGE OF BRANCH 30, REGIONAL TRIAL COURT (RTC) OF LUCENA CITY, and HEIRS OF CHESTER PAOLO ABRACIA,
Respondents.

G.R. No. 208162

Present:

PERALTA, *J., Chief Justice,*
PERLAS-BERNABE,*
LEONEN,
CAGUIOA,
REYES, A., JR.,**
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,*** and
DELOS SANTOS, *JJ.*

Promulgated:
January 7, 2020

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* On official leave.
** On official business.
*** On official leave.

DECISION

LEONEN, *J.*:

Section 14, paragraph 4 of the Anti-Hazing Law,[1] which provides that an accused's presence during a hazing is *prima facie* evidence of his or her participation, does not violate the constitutional presumption of innocence. This disputable presumption is also not a bill of attainder.

This Court resolves a Petition for Certiorari[2] seeking to declare unconstitutional Sections 5 and 14 of the Anti-Hazing Law—specifically, paragraph 4 of Section 14. The paragraph provides that one's presence during the hazing is *prima facie* evidence of participation as a principal, unless proven to have prevented or to have promptly reported the punishable acts to law enforcement authorities if they can, without peril to their person or their family.

Devie Ann Isaga Fuertes (Fuertes) is among the 46 accused in Criminal Case No. 2008-895, pending before Branch 30 of the Regional Trial Court of San Pablo City.[3] She and her co-accused had been charged with violating the Anti-Hazing Law, or Republic Act No. 8049, for the death of Chester Paolo Abracia (Abracia) due to injuries he allegedly sustained during the initiation rites of the Tau Gamma Phi Fraternity.[4] Fuertes is a member of the fraternity's sister sorority, Tau Gamma Sigma, and was allegedly present at the premises during the initiation rites.[5]

Abracia died on or about August 2, 2008 in Tayabas City, Quezon. An Information was filed on October 20, 2008, charging the 46 members of Tau Gamma Phi and Tau Gamma Sigma for violation of Republic Act No. 8049.

The pertinent portion of the Information read:

> That on or about the 2nd day of August 2008, at Barangay Mate, in the City of Tayabas, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all active members of Tau Gamma Phi Fraternity and Tau Gamma Sigma Sorority, acting conspiracy with one another, without prior written notice to the proper school authorities of Manuel S. Enverga University Foundation, Inc. (MSEUF) made seven (7) days prior to aforementioned date and in the absence of the school's assigned representatives during the initiation

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1 Republic Act No. 8049, as amended by Republic Act No. 11053.
2 *Rollo*, pp. 3–24.
3 Id. at 84.
4 Id. at 11–12.
5 Id. at 4.

perform and conduct initiation rite on the person of neophyte and herein deceased victim Chester Paolo Abracia as a prerequisite for his admission into membership in the said fraternity by hazing accomplished through subjection to physical suffering or injury, to wit: by successively hitting his body, using paddle and fist blows, thereby [inflicting] upon him contusion and abrasion located on his chest, abdomen, leg and thigh which resulted to cardio-respiratory arrest secondary to pulmonary embolism and acute myocardial infarction which is the direct and immediate cause of his death thereafter.

That the hazing was committed in the property of Lamberto Villarion O. Pandy situated at Barangay Mate, Tayabas City, a place outside the school premises of Manuel S. Enverga University Foundation, Inc. (MSEUF).

That accused Lamberto Villarion O. Pandy, as owner of the place where the hazing was conducted, acted as accomplice by cooperating in the execution of the offense by failing to take action to prevent the same from happening despite actual knowledge that it will be conducted therein.

CONTRARY TO LAW. Tayabas City for Lucena City, Philippines, October 20, 2008.[6]

Fuertes, a member of Tau Gamma Sigma Sorority, admitted that she was at the premises during the initiation rites. She was then 17 years old and was a student of Manuel S. Enverga University Foundation.[7]

The case was docketed as Criminal Case No. 2008-895, and was initially pending with Branch 54 of the Regional Trial Court of Lucena City. The case was transferred to Branch 30 of the Regional Trial Court of San Pablo City, pursuant to A.M. No. 10-7-224-RTC issued by this Court in July 2010.[8]

On August 1, 2013, Fuertes filed a Petition for Certiorari[9] before this Court, raising the sole issue of the unconstitutionality of Sections 3 and 4 of the Anti-Hazing Law. At the time, she had not yet been arraigned and was at large.[10]

Petitioner claims that Sections 3 and 4 of the Anti-Hazing Law are unconstitutional, as they would allow for the conviction of persons for a crime committed by others, in violation of the *res inter alios acta* rule. She also argues that these provisions violate Article III, Sections 1 and 19 of the Constitution for constituting a cruel and unusual punishment, as she was charged as a principal, and penalized with *reclusion perpetua*, for a non-

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6 Id. at 12.
7 Id. at 4.
8 Id. at 84.
9 Id. at 3–24.
10 Id. at 59.

bailable offense.[11]

On August 6, 2013, this Court issued a Resolution[12] requiring respondents to comment on the Petition.

On November 5, 2013, public respondents filed their Comment,[13] arguing that the Petition was procedurally and substantially erroneous,[14] for a multitude of reasons.

First, since petitioner assails the constitutionality of law provisions, public respondents argue that her Petition is one of declaratory relief, over which this Court has no original jurisdiction.[15] Further, they argue that declaratory relief is not the proper remedy, as there had already been a breach of the Anti-Hazing Law.[16]

Second, public respondents claim that petitioner is not entitled to equitable relief, as she has come to court with unclean hands,[17] having evaded arrest for five (5) years since being charged. They claim that, while government resources are directed for her arrest, she has remained a fugitive from justice, able to exercise her civil rights.[18] They pointed out that on September 6, 2010, she obtained a Philippine passport from the Philippine Embassy in Brunei, and a postal identification card in Pasay in May 2013.[19] She also verified the Petition before Atty. Manny V. Gragasin at the Quezon City Hall. Her counsel, Atty. Vicente D. Millora, appears to be in constant contact with her, but has not facilitated her surrender to the authorities.[20]

Third, public respondents argue that even if the Rules of Court were applied liberally, petitioner has still failed to overturn the presumption of constitutionality of Sections 3 and 4 of the Anti-Hazing Law. They claim that the presumption in Section 4—that the presence of persons during the hazing is *prima facie* evidence of participation, unless they prevented the commission of the punishable acts—is consistent with Sections 1, 14, and 19 of the Constitution.[21] They argue that several penal laws allow for *prima facie* evidence, all of which do not preclude the constitutional presumption of innocence. They also point out that this Court itself recognizes disputable

[11] Id. at 15.
[12] Id. at 31.
[13] Id. at 55–83.
[14] Id. at 56.
[15] Id. at 64–65.
[16] Id. at 66.
[17] Id.
[18] Id. at 67.
[19] Id. at 19–20 and 67.
[20] Id. at 68.
[21] Id. at 69.

presumptions, as in Rules of Court, Rule 131, Section 3.[22]

Moreover, public respondents claim that certain laws, such as the Revised Penal Code, Article 275, penalize presence and inaction.[23] They cited *People v. Mingoa*[24] and *Bautista v. Court of Appeals*,[25] in which this Court upheld disputable presumptions in criminal law.[26]

Fourth, public respondents argue that there is no violation of the *res inter alios acta* rule, because under the assailed law, there must still be a finding of actual participation before a person may be held criminally liable.[27]

Fifth, public respondents claim that the penalty of *reclusion perpetua* that will be imposed is not cruel and unusual punishment. They argue that, consistent with *Furman v. Georgia*[28] and *Perez v. People*,[29] penalties such as life imprisonment and even death may be imposed to discourage crimes harmful to public interest.[30] As for the Anti-Hazing Law itself, *reclusion perpetua* is only imposable on the actual participants in the hazing, and only when the hazing results in death, rape, sodomy, or mutilation.[31]

Sixth, public respondents argue that the provision on *prima facie* evidence in the Anti-Hazing Law is a legislative decision that this Court must respect in view of the doctrine of separation of powers.[32] They raise that the presumption was put in place in view of the legislative policy to discourage fraternities, sororities, organizations, or associations from making hazing a requirement for admission.[33]

Finally, public respondents argue that petitioner's minority and right to bail are matters better left to the judgment of the trial court.[34]

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[22] Id. at 70–71. The laws mentioned are Revised Penal Code, Article 217 on malversation; Presidential Decree No. 1612, Section 5 on fencing; Presidential Decree No. 1613, Section 6 on arson; Batas Pambansa Blg. 22, Section 2 on bouncing checks; Republic Act No. 7832, Section 4 on illegal use of electricity; Republic Act No 8041, Section 8 on theft, pilferage, or unlawful acts relating to use of water; Republic Act No. 1379, Section 2 on illegally acquired wealth; Republic Act No. 8424, Section 29 on improperly acquired earnings tax of corporations; and Republic Act No. 8550, Section 86–88 on poaching.

[23] Id.

[24] 92 Phil. 856 (1953) [Per J. Reyes, En Banc].

[25] 413 Phil. 159 (2001) [Per J. Bellosillo, Second Division].

[26] *Rollo*, pp. 72–73.

[27] Id. at 73–74.

[28] 408 U.S. 238 (1972).

[29] 568 Phil. 491 (2008) [Per J. R.T. Reyes, Third Division].

[30] *Rollo*, pp. 74–76.

[31] Id. at 74–75.

[32] Id. at 79–80.

[33] Id. at 80.

[34] Id. at 80–82.

On November 19, 2013, this Court issued a Resolution[35] noting the Comment, and requiring petitioner to file a Reply.

On January 8, 2014, Fuertes filed her Reply[36] to the Comment. On January 21, 2014, this Court issued a Resolution[37] noting the Reply. This Court also gave due course to the Petition, treated the Comment as Answer, and required the parties to submit their memoranda.

On April 21, 2014, public respondents filed a Manifestation,[38] praying that their Comment be considered their Memorandum.

On April 23, 2014, petitioner filed her Memorandum,[39] arguing that while the Information charges all members of Tau Gamma Phi and Tau Gamma Sigma as principals and conspirators for Abracia's death, it failed to allege that all the accused actually participated in the hazing.[40]

She insists that Sections 3 and 4 of the Anti-Hazing Law violate Sections 1, 14, and 22 of the Constitution. She claims that the Anti-Hazing Law presumes that there is a conspiracy to commit murder or homicide. Further, the Anti-Hazing Law treats persons as principals or co-conspirators simply because of their presence at an initiation rite, or while they are an active member of the fraternity or sorority, even if one did not know, or actually participate, in the act that caused the crime charged.[41] She argues that she and other members of Tau Gamma Sigma should not have been charged, there being no showing that they knew, or actually participated in the hazing which led to the death of Abracia.[42]

Petitioner argues that conspiracy must be proved beyond reasonable doubt, and a mere presumption cannot be the basis to file an information for murder.[43]

She likewise claims that Sections 3 and 4 are a bill of attainder[44]—a legislative act declaring persons guilty of a crime without judicial trial—because they treat members of a particular group as principals or co-conspirators, even if they have no actual knowledge or participation in the

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35 Id. at 89–90.
36 Id. at 103–119-A.
37 Id. at 122-A–122-B.
38 Id. at 140–145.
39 Id. at 149–171.
40 Id. at 160.
41 Id. at 161.
42 Id. at 167.
43 Id. at 162.
44 Id. at 167.

act.[45] She argues that in imposing these provisions, Congress has arrogated judicial power upon itself, since the determination of the degree of participation in a crime is a judicial, and not legislative, function.[46]

Finally, petitioner argues that the procedural errors assigned by public respondent deserve scant consideration, and that this Court should set aside technical defects when there is a violation of the Constitution.[47]

On June 3, 2014, this Court issued a Resolution[48] noting public respondents' Manifestation and petitioner's Memorandum.

In 2018, the Anti-Hazing Law was amended by Republic Act No. 11053. The law now prohibits all forms of hazing in "fraternities, sororities, and organizations in schools, including citizens' military training and citizens' army training[,]" as well as "all other fraternities, sororities, and organizations that are not school-based, such as community-based and other similar fraternities, sororities, and organizations."[49] Among the changes were the renumbering of Sections 3 and 4 to Sections 5 and 14, respectively, and their amendments. Section 5 of the Anti-Hazing Law now reads:

> SECTION 5. *Monitoring of Initiation Rites.* — The head of the school or an authorized representative must assign at least two (2) representatives of the school to be present during the initiation. It is the duty of the school representatives to see to it that no hazing is conducted during the initiation rites, and to document the entire proceedings. Thereafter, said representatives who were present during the initiation shall make a report of the initiation rites to the appropriate officials of the school regarding the conduct of the said initiation: *Provided,* That if hazing is still committed despite their presence, no liability shall attach to them unless it is proven that they failed to perform an overt act to prevent or stop the commission thereof.

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[45] Id. at 168.

[46] Id. at 169.

[47] Id. at 169–170.

[48] Id. at 175–176.

[49] Republic Act No. 11053 (2018), sec. 3 states:
SECTION 3. Prohibition on Hazing. — All forms of hazing shall be prohibited in fraternities, sororities, and organizations in schools, including citizens' military training and citizens' army training. This prohibition shall likewise apply to all other fraternities, sororities, and organizations that are not school-based, such as community-based and other similar fraternities, sororities, and organizations: Provided, That the physical, mental, and psychological testing and training procedures and practices to determine and enhance the physical, mental, and psychological fitness of prospective regular members of the AFP and the PNP as approved by the Secretary of National Defense and the National Police Commission, duly recommended by the Chief of Staff of the AFP and the Director General of the PNP, shall not be considered as hazing for purposes of this Act: Provided, further, That the exception provided herein shall likewise apply to similar procedures and practices approved by the respective heads of other uniformed learning institutions as to their prospective members, nor shall this provision apply to any customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective, subject to prior submission of a medical clearance or certificate.
In no case shall hazing be made a requirement for employment in any business or corporation.

The pertinent paragraph of Section 14 was amended to include the additional defense of prompt reporting of the hazing to law enforcement authorities:

> The presence of any person, even if such person is not a member of the fraternity, sorority, or organization, during the hazing is *prima facie* evidence of participation therein as a principal unless such person or persons prevented the commission of the acts punishable herein or *promptly reported the same to the law enforcement authorities if they can do so without peril to their person or their family.* (Emphasis supplied)

Moreover, under Section 14, when death occurs during the hazing, the penalty imposed on principals who participated in it was increased from just *reclusion perpetua* to *reclusion perpetua* and a ₱3-million fine.

Accordingly, this Court required the parties to move in the premises as to whether the law's passage affects this case.[50]

To public respondents, the passage of Republic Act No. 11053 did not render this case moot.[51] They point out that petitioner did not raise issues on the penalty imposed or the defenses that may be presented, only the *prima facie* presumption in Section 14.[52]

Moreover, petitioners claim that, while the additional imposable fine is disadvantageous to petitioner, she may avail of the second defense provided in the amendment, which benefits her. They add that the additional penalty cannot retroactively apply to petitioner since it will disadvantage her. Further, they submit that since Republic Act No. 11053 retains the *prima facie* presumption, petitioner may still incur criminal liability. As such, this case still presents a justiciable controversy.[53]

As of June 25, 2019, petitioner has been detained at the San Pedro City Jail.[54]

The primary issue to be resolved by this Court is whether or not Sections 5 and 14 of the Anti-Hazing Law should be declared unconstitutional.

This Court, however, must first rule upon whether or not the Petition is a proper remedy, and whether or not bringing the Petition directly

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50 *Rollo*, pp. 180–181.
51 Id. at 216.
52 Id. at 219.
53 Id. at 219–220.
54 Id. at 244.

before this Court was a proper recourse.

I

A requirement for the exercise of this Court's power of judicial review is that the case must be ripe for adjudication:

> Petitioners must, thus, comply with the requisites for the exercise of the power of judicial review: (1) there must be an actual case or justiciable controversy before this Court; (2) the question before this Court must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.[55] (Citation omitted)

An issue is ripe for adjudication when an assailed act has already been accomplished or performed by a branch of government. Moreover, the challenged act must have directly adversely affected the party challenging it. In *Philconsa v. Philippine Government*:[56]

> For a case to be considered ripe for adjudication, it is a prerequisite that an act had then been accomplished or performed by either branch of government before a court may interfere, and the petitioner must allege the existence of an immediate or threatened injury to himself as a result of the challenged action. Petitioner must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.[57] (Citations omitted)

When matters are still pending or yet to be resolved by some other competent court or body, then those matters are not yet ripe for this Court's adjudication.[58] This is especially true when there are facts that are actively controverted or disputed.[59]

Here, petitioner argues that she should not have been charged with violating the Anti-Hazing Law as she allegedly did not have either actual knowledge or participation in the initiation rites of the Tau Gamma Phi Fraternity. She claims that she was "merely walking around the premises with her fellow sisters in the Sorority"[60] and "was completely unaware"[61] that

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[55] *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

[56] 801 Phil. 472 (2016) [Per J. Carpio, En Banc].

[57] Id. at 486.

[58] *See Antonio v. Tanco*, 160 Phil. 467(1975) [Per J. Aquino, En Banc]; *Ferrer v. Roco*, 637 Phil. 310 [Per J. Mendoza, Second Division]; *San Vicente Shipping, Inc. v. The Public Service Commission,* 166 Phil. 153 (1977) [Per J. Fernando, Second Division];

[59] *See Manila Public School Teachers Association v. Laguio*, 277 Phil. 359 (1991) [Per J. Narvasa, En Banc]; *Aala v. Uy*, 803 Phil. 36 (2017) [Per J. Leonen, En Banc].

[60] *Rollo*, p. 14.

[61] Id.

Abracia was being hazed then.

That petitioner did not actually know about or participate in the hazing is a matter of defense and must be proved by presentation of evidence during trial. To determine at this stage, where a trial has yet to be conducted, whether petitioner was correctly charged would be to demand that this Court hypothetically admit the truth of her claims. As the criminal case is still ongoing, it would be premature to resolve the factual issues petitioner raises. This Court cannot preempt the trial court's determination on the truth or falsity of petitioner's claims.

II

Petitioner's direct resort to this Court, when there is a perfectly competent trial court before which she may raise her constitutional question, abrogates the doctrine of hierarchy of courts.

"The doctrine of hierarchy of courts ensures judicial efficiency at all levels of courts."[62] In *Aala v. Uy*:[63]

> The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."
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> As expressly provided in the Constitution, this Court has original jurisdiction "over petitions for *certiorari,* prohibition, *mandamus*, *quo warranto*, and *habeas corpus*." However, this Court has emphasized in *People v. Cuaresma* that the power to issue writs of *certiorari,* prohibition, and *mandamus* does not exclusively pertain to this Court. Rather, it is shared with the Court of Appeals and the Regional Trial Courts. Nevertheless, "this concurrence of jurisdiction" does not give parties unfettered discretion as to the choice of forum. The doctrine on hierarchy of courts is determinative of the appropriate venue where petitions for extraordinary writs should be filed. Parties cannot randomly select the court or forum to which their actions will be directed.
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> There is another reason why this Court enjoins strict adherence to the doctrine on hierarchy of courts. As explained in *Diocese of Bacolod v. Commission on Elections*, "[t]he doctrine that requires respect for the

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[62] *Falcis v. Civil Registrar General,* G.R. No. 217910, September 3, 2019, <http://sc.judiciary.gov.ph/8227/> 92 [Per J. Leonen, En Banc].

[63] 803 Phil. 36 (2017) [Per J. Leonen, En Banc].

> hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner."
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> Consequently, this Court will not entertain direct resort to it when relief can be obtained in the lower Courts. This holds especially true when questions of fact are raised. Unlike this Court, trial courts and the Court of Appeals are better equipped to resolve questions of fact. They are in the best position to deal with causes in the first instance.[64]

A motion to quash an information may be filed at any time before a plea is entered by the accused.[65] The accused may move to quash an information on constitutional grounds,[66] based on the theory that there can be no crime if there is no law, the law being invalid (*nullum crimen sine lege*). Indeed, among the prayers in the Petition is for this Court to quash the Information in Criminal Case No. 2008-895:

> IT IS MOST RESPECTFULLY PRAYED THAT IN THE ALTERNATIVE TO DECLARE THE INFORMATION DATED OCTOBER 20, 2008 IN CRIMINAL CASE NO. 2008-895 BEFORE BRANCH 30, REGIONAL TRIAL COURT OF LUCENA CITY, IN SO FAR AS PETITIONER AND OTHER MEMBERS OF THE TAU GAMMA SIGMA SORORITY, ARE CONCERNED.[67]

Evidently, petitioner herself recognizes that the issue of the constitutionality of the Anti-Hazing Law's provisions is not incompatible with the quashal of the Information. Aside from her bare invocation that her substantive rights are being derogated, petitioner fails to explain the necessity and urgency of her direct resort to this Court.

In her Memorandum, petitioner points out that the Information fails to charge her and her fellow sorority members with actual participation in the alleged crime:

> The Information in Criminal Case No. 2008-895, above quoted immediately charged all the Members of Tau Gamma Phi fraternity and Tau Gamma Sigma Sorority as principals/conspirators for the death of a neophyte who 3 days after the initiation rites in question, resulting allegedly from the hazing by a member or members of the fraternity as quoted above.

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64 Id. at 54–56.

65 RULES OF COURT, Rule 117, sec. 1 states:
SECTION 1. *Time to move to quash.* — At any time before entering his plea, the accused may move to quash the complaint or information.

66 For example, in *People v. Ferrer*, 150-C Phil. 551 (1972) [Per J. Castro, First Division], motions to quash informations were filed in the lower courts questioning the validity of the Anti-Subversion Act. In these motions, the accused argued that the Anti-Subversion Act was a bill of attainder, among others.

67 *Rollo*, p. 16.

> The Information did not allege that all of the 46 accused actually participated in the hazing that later allegedly resulted in the death of neophyte Chester Paolo Abracia a few days after; it merely stated that the 46 accused are "all active members of Tau Gamma Phi Fraternity and Tau Gamma Sigma Sorority, acting in conspiracy with one another".[68]

This claim is precisely what is addressed in a motion to quash. As correctly pointed out by public respondents, the issues of petitioner's minority and right to bail should be raised in the trial court as well.

To justify the filing of this Petition before this Court absent any intermediary decision, resolution, or order by any lower court, petitioner argues that this Court is "the final arbiter whether or not a law violates the Constitution, particularly the rights of citizens under the Bill of Rights."[69]

Indeed, this Court is the final arbiter of the constitutionality of any law—but we are not the sole and exclusive forum before which constitutional questions may be posed.[70] We are the court of last resort, not the first.

Regional trial courts, including the one before which Criminal Case No. 2008-895 is pending, are vested with judicial power, which embraces the power to determine if a law breaches the Constitution. In *Garcia v. Drilon*:[71]

> It is settled that [Regional Trial Courts] have jurisdiction to resolve the constitutionality of a statute, "this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law." The Constitution vests the power of judicial review or the power to declare the constitutionality or validity of a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation not only in this Court, but in all RTCs. We said in *J.M. Tuason and Co., Inc. v. CA* that, "[p]lainly the Constitution contemplates that the inferior courts should have jurisdiction in cases involving constitutionality of any treaty or law, for it speaks of appellate review of *final judgments of inferior courts* in cases where such constitutionality happens to be in issue."[72] (Emphasis in the original, citations omitted)

Notably, at the time the Petition was filed before this Court, petitioner admitted that she was "at large"[73] and had not refuted public respondents'

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[68] Id. at 160.
[69] Id. at 169–170.
[70] *See Spouses Mirasol v. Court of Appeals*, 403 Phil. 760 (2001) [Per J. Quisumbing, Second Division]; *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*, 533 Phil. 590 (2006) [Per J. Chico-Nazario, First Division]; and *Garcia v. Drilon*, 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].
[71] 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].
[72] Id. at 79–80.
[73] *Rollo*, p. 4.

claim that she had been a fugitive from justice, having evaded arrest from 2008[74] until the time she was finally detained. The failure to avail of the proper remedies in the proper forum lies with her.

Nonetheless, regardless of petitioner's remedial errors, this Court acknowledges that the doctrine of hierarchy of courts is not ironclad, especially when pressing constitutional matters are at stake. In *Diocese of Bacolod v. Commission on Elections*:[75]

> Thus, the doctrine of hierarchy of courts is not an iron-clad rule. This court has "full discretionary power to take cognizance and assume jurisdiction [over] special civil actions for certiorari . . . filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition." As correctly pointed out by petitioners, we have provided exceptions to this doctrine:
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> First, a direct resort to this court is allowed when there are genuine issues of constitutionality that must be addressed at the most immediate time. A direct resort to this court includes availing of the remedies of certiorari and prohibition to assail the constitutionality of actions of both legislative and executive branches of the government.
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> . . . .
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> A second exception is when the issues involved are of transcendental importance. In these cases, the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence. The doctrine relating to constitutional issues of transcendental importance prevents courts from the paralysis of procedural niceties when clearly faced with the need for substantial protection.
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> . . . .
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> Third, cases of first impression warrant a direct resort to this court. In cases of first impression, no jurisprudence yet exists that will guide the lower courts on this matter. In *Government of the United States v. Purganan*, this court took cognizance of the case as a matter of first impression that may guide the lower courts:
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>> In the interest of justice and to settle once and for all the important issue of bail in extradition proceedings, we deem it best to take cognizance of the present case. Such proceedings constitute a matter of first impression over which there is, as yet, no local jurisprudence to guide lower courts.
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> . . . .
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> Fourth, the constitutional issues raised are better decided by this

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74 Id. at 67.

75 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

court. In *Drilon v. Lim*, this court held that:

> . . . it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion.[76]

Here, there is transcendental interest in determining whether a penal statute with grave consequences to the life and liberty of those charged under it is consistent with our constitutional principles. In the interest of judicial economy, this Court shall resolve this case on the merits.

III

While petitioner purports to assail the constitutionality of both Sections 5[77] and 14[78] of the Anti-Hazing Law, all her arguments are focused on

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[76] Id. at 330–333.

[77] Republic Act No. 11053 (2018), sec. 5 provides:
SECTION 5. Monitoring of Initiation Rites. — The head of the school or an authorized representative must assign at least two (2) representatives of the school to be present during the initiation. It is the duty of the school representatives to see to it that no hazing is conducted during the initiation rites, and to document the entire proceedings. Thereafter, said representatives who were present during the initiation shall make a report of the initiation rites to the appropriate officials of the school regarding the conduct of the said initiation: Provided, That if hazing is still committed despite their presence, no liability shall attach to them unless it is proven that they failed to perform an overt act to prevent or stop the commission thereof.

[78] Republic Act No. 11053 (2018), sec. 14 provides:
SECTION 14 Penalties. — The following penalties shall be imposed:

(a) The penalty of reclusion perpetua and a fine of Three million pesos (P3,000,000.00) shall be imposed upon those who actually planned or participated in the hazing if, as a consequence of the hazing, death, rape, sodomy, or mutilation results therefrom;

(b) The penalty of reclusion perpetua and a fine of Two million pesos (P2,000,000.00) shall be imposed upon:

(1) All persons who actually planned or participated in the conduct of the hazing;

(2) All officers of the fraternity, sorority, or organization who are actually present during the hazing;

(3) The adviser of a fraternity, sorority, or organization who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if such adviser or advisers can do so without peril to their person or their family;

(4) All former officers, nonresident members, or alumni of the fraternity, sorority, or organization who are also present during the hazing: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus belong to any other profession subject to regulation by the Professional Regulation Commission (PRC), such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into the profession shall be subject to the approval of the respective Professional Regulatory Board;

(5) Officers or members of a fraternity, sorority, or organization who knowingly cooperated in

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carrying out the hazing by inducing the victim to be present thereat; and

(6) Members of the fraternity, sorority, or organization who are present during the hazing when they are intoxicated or under the influence of alcohol or illegal drugs;

(c) The penalty of reclusion temporal in its maximum period and a fine of One million pesos (P1,000,000.00) shall be imposed upon all persons who are present in the conduct of the hazing;

(d) The penalty of reclusion temporal and a fine of One million pesos (P1,000,000.00) shall be imposed upon former officers, nonresident members, or alumni of the fraternity, sorority, or organization who, after the commission of any of the prohibited acts proscribed herein, will perform any act to hide, conceal, or otherwise hamper or obstruct any investigation that will be conducted thereafter: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus belong to any other profession subject to regulation by the PRC, such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into the profession shall be subject to the approval of the respective Professional Regulatory Board;

(e) The penalty of prision correccional in its minimum period shall be imposed upon any person who shall intimidate, threaten, force, or employ, or administer any form of vexation against another person for the purpose of recruitment in joining or promoting a particular fraternity, sorority, or organization. The persistent and repeated proposal or invitation made to a person who had twice refused to participate or join the proposed fraternity, sorority, or organization, shall be prima facie evidence of vexation for purposes of this section; and

(f) A fine of One million pesos (P1,000,000.00) shall be imposed on the school if the fraternity, sorority, or organization filed a written application to conduct an initiation which was subsequently approved by the school and hazing occurred during the initiation rites or when no representatives from the school were present during the initiation as provided under Section 5 of this Act: Provided, That if hazing has been committed in circumvention of the provisions of this Act, it is incumbent upon school officials to investigate motu proprio and take an active role to ascertain factual events and identify witnesses in order to determine the disciplinary sanctions it may impose, as well as provide assistance to police authorities.

The owner or lessee of the place where hazing is conducted shall be liable as principal and penalized under paragraphs (a) or (b) of this section, when such owner or lessee has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if they can do so without peril to their person or their family. If the hazing is held in the home of one of the officers or members of the fraternity, sorority, or organization, the parents shall be held liable as principals and penalized under paragraphs (a) or (b) hereof when they have actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if such parents can do so without peril to their person or their family.

The school authorities including faculty members as well as barangay, municipal, or city officials shall be liable as an accomplice and likewise be held administratively accountable for hazing conducted by fraternities, sororities, and other organizations, if it can be shown that the school or barangay, municipal, or city officials allowed or consented to the conduct of hazing or where there is actual knowledge of hazing, but such officials failed to take any action to prevent the same from occurring or failed to promptly report to the law enforcement authorities if the same can be done without peril to their person or their family.

The presence of any person, even if such person is not a member of the fraternity, sorority, or organization, during the hazing is prima facie evidence of participation therein as a principal unless such person or persons prevented the commission of the acts punishable herein or promptly reported the same to the law enforcement authorities if they can do so without peril to their person or their family.

The incumbent officers of the fraternity, sorority, or organization concerned shall be jointly liable with those members who actually participated in the hazing.

Any person charged under this Act shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.

This section shall apply to the president, manager, director, or other responsible officer of businesses or corporations engaged in hazing as a requirement for employment in the manner provided herein.

Any conviction by final judgment shall be reflected in the scholastic record, personal, or employment record of the person convicted, regardless of when the judgment of conviction has become final.

paragraph 4 of Section 14. In her Petition, she states:

> It is most respectfully submitted that the provision of RA No. 8049 in so far as it penalizes a mere member not of the fraternity or sorority, who was merely present on the occasion of the so-called initiation rites but had not witnessed, much less participated in any wrong doing, is presumed/considered as principal, for whatever acts committed by any member or members, considered as "hazing" punishable sections 3 and 4 of the law, RA 8049, and is presumed/considered to have failed to take any action to prevent the same from occurring, as in this case, where petitioner under the circumstances, was immediately indicted as principal for the acts of people albeit members of a fraternity, which is punishable by *reclusion perpetua*, and non-bailable[.][79]

The pertinent portion of Section 14 provides:

> The presence of any person, even if such person is not a member of the fraternity, sorority, or organization, during the hazing is prima facie evidence of participation therein as a principal unless such person or persons prevented the commission of the acts punishable herein or promptly reported the same to the law enforcement authorities if they can do so without peril to their person or their family.

This Court has upheld the constitutionality of disputable presumptions in criminal laws.[80] The constitutional presumption of innocence is not violated when there is a logical connection between the fact proved and the ultimate fact presumed.[81] When such *prima facie* evidence is unexplained or not contradicted by the accused, the conviction founded on such evidence will be valid.[82] However, the prosecution must still prove the guilt of the accused beyond reasonable doubt.[83] The existence of a disputable presumption does not preclude the presentation of contrary evidence.[84]

In *People v. Mingoa*,[85] this Court passed upon the constitutionality of Article 217 of the Revised Penal Code. It provides that a public officer's failure "to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer," is *prima facie* evidence that such missing funds or property were put to personal use. Upholding Article 217's constitutionality, this Court declared:

> The contention that this legal provision violates the constitutional right of the accused to be presumed innocent until the contrary is proved cannot be sustained. The question of the constitutionality of the statute not

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[79] *Rollo*, p. 14.

[80] *See People v. Mingoa*, 92 Phil. 856-860 (1953) [Per J. Reyes, En Banc].

[81] *People v. Baludda*, 376 Phil. 614, 623 (1999) [Per J. Purisima, Second Division].

[82] *Wa-acon v. People*, 539 Phil. 485, 497 (2006) [Per J. Velasco, Jr., Third Division].

[83] *People v. Babida*, 258 Phil. 831, 834 (1989) [Per J. Sarmiento, En Banc].

[84] *Bautista v. Court of Appeals*, 413 Phil. 159, 173 (2001) [Per J. Bellosillo, Second Division].

[85] 92 Phil. 856 (1953) [Per J. Reyes, En Banc].

> having been raised in the court below, it may not be considered for the first time on appeal. (Robb vs. People, 68 Phil., 320.)
>
> In any event, the validity of statutes establishing presumptions in criminal cases is now a settled matter, Cooley, in his work on constitutional limitations, 8th ed., Vol. I, pp. 639-641, says that "there is no constitutional objection to the passage of a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence." In line with this view, it is generally held in the United States that the legislature may enact that when certain facts have been proved they shall be *prima facie* evidence of the existence of the guilt of the accused and shift the burden of proof provided there be a rational connection between the facts proved and the ultimate fact presumed so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common experience.[86]

In *People v. Baludda*,[87] this Court affirmed the constitutionality of the disputable presumption that the finding of a dangerous drug in the accused's house or premises, absent a satisfactory explanation, amounts to knowledge or *animus possidendi*:

> Under the Rules of Evidence, it is disputably presumed that things which a person possesses or over which he exercises acts of ownership, are owned by him. In *U.S. vs. Bandoc*, the Court ruled that the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi* and is enough to convict in the absence of a satisfactory explanation. The constitutional presumption of innocence will not apply as long as there is some logical connection between the fact proved and the ultimate fact presumed, and the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. The burden of evidence is thus shifted on the possessor of the dangerous drug to explain absence of *animus possidendi*.[88] (Citations omitted)

In *Dizon-Pamintuan v. People*,[89] Section 5 of Presidential Decree No. 1612, which provides that the mere possession of stolen goods is *prima facie* evidence of fencing, was found valid:

> Since Section 5 of P.D. No. 1612 expressly provides that "[m]ere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing," it follows that the petitioner is presumed to have knowledge of the fact that the items found in her possession were the proceeds of robbery or theft. The presumption is reasonable for no other natural or logical inference can arise from the established fact of her possession of the proceeds of the crime of robbery or theft. This presumption does not offend

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[86] Id. at 858–859.
[87] 376 Phil. 614 (1999) [Per J. Purisima, Second Division].
[88] Id. at 623.
[89] 304 Phil. 219 (1994) [Per J. Davide, Jr., First Division].

the presumption of innocence enshrined in the fundamental law. In the early case of *United States vs. Luling*, this Court held:

> It has been frequently decided, in case of statutory crimes, that no constitutional provision is violated by a statute providing that proof by the state of some material fact or facts shall constitute prima facie evidence of guilt, and that then the burden is shifted to the defendant for the purpose of showing that such act or acts are innocent and are committed without unlawful intention. (Commonwealth vs. Minor, 88 Ky., 422.)
>
> In some of the States, as well as in England, there exist what are known as common law offenses. In the Philippine Islands no act is a crime unless it is made so by statute. The state having the right to declare what acts are criminal, within certain well defined limitations, has a right to specify what act or acts shall constitute a crime, as well as what act or acts shall constitute a crime, as well as what proof shall constitute *prima facie* evidence of guilt, and then to put upon the defendant the burden of showing that such act or acts are innocent and are not committed with any criminal intent or intention.[90] (Citations omitted)

In fact, the constitutionality of Section 14, paragraph 4 of the Anti-Hazing Law has already been discussed—and upheld—by this Court. In *Dungo v. People*,[91] this Court acknowledged that the secrecy and concealment in initiation rites, and the culture of silence within many organizations, would make the prosecution of perpetrators under the Anti-Hazing Law difficult:

> Secrecy and silence are common characterizations of the dynamics of hazing. To require the prosecutor to indicate every step of the planned initiation rite in the information at the inception of the criminal case, when details of the clandestine hazing are almost nil, would be an arduous task, if not downright impossible. The law does not require the impossible (*lex non cognit ad impossibilia*).
>
> . . . .
>
> Needless to state, the crime of hazing is shrouded in secrecy. Fraternities and sororities, especially the Greek organizations, are secretive in nature and their members are reluctant to give any information regarding initiation rites. The silence is only broken after someone has been injured so severely that medical attention is required. It is only at this point that the secret is revealed and the activities become public. Bearing in mind the concealment of hazing, it is only logical and proper for the prosecution to resort to the presentation of circumstantial evidence to prove it.[92] (Citations omitted)

Because of this, this Court held that the provision that presence during

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[90] Id. at 231–232.

[91] 762 Phil. 630 (2015) [Per J. Mendoza, Second Division].

[92] Id. at 671–679.

a hazing is *prima facie* evidence of participation in it relates to the conspiracy in the crime:

> The Court does not categorically agree that, under R.A. No. 8049, the prosecution need not prove conspiracy. Jurisprudence dictates that conspiracy must be established, not by conjectures, but by positive and conclusive evidence. Conspiracy transcends mere companionship and mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge, acquiescence in or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.
>
> R.A. No. 8049, nevertheless, presents a novel provision that introduces a disputable presumption of actual participation; and which modifies the concept of conspiracy. Section 4, paragraph 6 thereof provides that the presence of any person during the hazing is *prima facie* evidence of participation as principal, unless he prevented the commission of the punishable acts. This provision is unique because a disputable presumption arises from the mere presence of the offender during the hazing, which can be rebutted by proving that the accused took steps to prevent the commission of the hazing.
>
> The petitioners attempted to attack the constitutionality of Section 4 of R.A. No. 8049 before the CA, but did not succeed. "[A] finding of *prima facie* evidence . . . does not shatter the presumptive innocence the accused enjoys because, before *prima facie* evidence arises, certain facts have still to be proved; the trial court cannot depend alone on such evidence, because precisely, it is merely *prima facie*. It must still satisfy that the accused is guilty beyond reasonable doubt of the offense charged. Neither can it rely on the weak defense the latter may adduce."
>
> Penal laws which feature *prima facie* evidence by disputable presumptions against the offenders are not new, and can be observed in the following: (1) the possession of drug paraphernalia gives rise to *prima facie* evidence of the use of dangerous drug; (2) the dishonor of the check for insufficient funds is *prima facie* evidence of knowledge of such insufficiency of funds or credit; and (3) the possession of any good which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.
>
> Verily, the disputable presumption under R.A. No. 8049 can be related to the conspiracy in the crime of hazing. The common design of offenders is to haze the victim. Some of the overt acts that could be committed by the offenders would be to (1) plan the hazing activity as a requirement of the victim's initiation to the fraternity; (2) induce the victim to attend the hazing; and (3) actually participate in the infliction of physical injuries.
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> . . . .
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> Hence, generally, mere presence at the scene of the crime does not in itself amount to conspiracy. Exceptionally, under R.A. No. 8049, the participation of the offenders in the criminal conspiracy can be proven by the *prima facie* evidence due to their presence during the hazing, unless they

prevented the commission of the acts therein.[93] (Citations omitted)

Here, petitioner fails to show that a logical relation between the fact proved—presence of a person during the hazing—and the ultimate fact presumed—their participation in the hazing as a principal—is lacking. Neither has it been shown how Section 14 of the Anti-Hazing Law does away with the requirement that the prosecution must prove the participation of the accused in the hazing beyond reasonable doubt.

On the contrary, the study of human behavior has shown that being surrounded by people who approve or encourage one's conduct impairs otherwise independent judgment, be it in the form of peer pressure, herd mentality, or the bystander effect.

The term "groupthink" was coined by American psychologist Irving L. Janis to describe the phenomenon of "mental deterioration of mental efficiency, reality testing, and moral judgment that results from group pressures."[94] He observed:

> Groups, like individuals, have shortcomings. Groups can bring out the worst as well as the best in man. Nietzsche went so far as to say that madness is the exception in individuals but the rule in groups. A considerable amount of social science shows that in circumstances of extreme crisis, group contagion occasionally gives rise to collective panic, violent acts of scapegoating, and other forms of what could be called group madness.[95]

The failure of individuals in a group to intervene allows evil acts to persist, as explained by Philip Zimbardo, the American psychologist behind the controversial Stanford Prison Experiment:[96]

> In situations where evil is being practiced, there are perpetrators, victims, and survivors. However, there are often observers of the ongoing activities or people who know what is going on and do not intervene to help or to challenge the evil and thereby enable evil to persist by their inaction.
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> It is the good cops who never oppose the brutality of their buddies beating up minorities on the streets or in the back room of the station house. It was the good bishops and cardinals who covered over the sins of their predatory parish priests because of their overriding concern for the image

[93] Id. at 673–678.

[94] Irving L. Janis, "Groupthink," in THE HAZING READER (2004), edited by Hank Nuwer, Indiana University Press, p. 25.

[95] Id. at 20.

[96] The Stanford Prison Experiment, conducted in 1971, was an experiment in which a group of university students "played randomly assigned roles of a prisoner or guard in a mock prison" (*See* PHILIP ZIMBARDO, THE LUCIFER EFFECT (2008)) to study, among others, the phenomenon by which people "conform, comply, obey, and be readily seduced into doing things they could not imagine doing" when immersed in certain situations or systems.

of the Catholic Church. They knew what was wrong and did nothing to really confront that evil, thereby enabling these pederasts to continue sinning for years on end (at the ultimate cost to the Church of billions in reparations and many disillusioned followers).

Similarly, it was the good workers at Enron, WorldCom, Arthur Andersen, and hosts of similarly corrupt corporations who looked the other way when the books were being cooked. Moreover, as I noted earlier, in the Stanford Prison Experiment it was the good guards who never intervened on behalf of the suffering prisoners to get the bad guards to lighten up, thereby implicitly condoning their continually escalating abuse. It was I, who saw these evils and limited only physical violence by the guards as my intervention while allowing psychological violence to fill our dungeon prison. By trapping myself in the conflicting roles of researcher and prison superintendent, I was overwhelmed with their dual demands, which dimmed my focus on the suffering taking place before my eyes. I too was thus guilty of the evil of inaction.[97] (Citation omitted)

Through their express and implicit sanction, observers of hazing aggravate the abuses perpetuated upon neophytes. As an American fraternity member explained, hazing is "almost like performance art"[98] where the so-called audience plays as much of a role as the neophytes at the center of the initiation rites. Hazing derives its effectiveness from the humiliation it achieves. Humiliation requires an audience. The audience provides the provocation, goading the actors to escalate borderline conduct toward more extreme behavior that would otherwise be intolerable. In situations like this, presence is participation.

As described by a victim of hazing in the United States:

Nuwer: Is this theater or sadism?

Pledge: It was a lot of theater. In hindsight, every time I talked to him outside the room [where the hazing took place], I always thought he was kind of scared of me. I was 21, just actually four months younger than he was . . . but some of the mystique he had wasn't there when we weren't in the room.

Nuwer: He was like an actor getting ready to come onstage . . . or an athlete before a ballgame?

Pledge: Definitely. I was told that before he came downstairs he would be in his room drinking or whatever, and a lot of the brothers would come in to fire him up. They'd get him all riled up, saying we weren't respecting the house. They would just provoke him, or maybe they'd just get him angry, or a little drunk. He'd come in and, like I said, he'd be this different

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97 PHILIP ZIMBARDO, THE LUCIFER EFFECT 317–318 (2008).

98 Snowden Wright, *In Defense of Hazing*, THE NEW YORK DAILY NEWS, April 12, 2012, available at <http://www.nydailynews.com/opinion/defense-hazing-article-1.1059984> (last visited on January 10, 2020).

person. . . . They were getting him hyped up, jacked up, ready to go.[99]

Thus, those group members who do not actually perform the hazing ritual, but who by their presence incite or exacerbate the violence being committed, may be principals either by inducement or by indispensable cooperation.[100]

Moreover, petitioner's claim that Section 14 of the Anti-Hazing Law violates the rule on *res inter alios acta* lacks merit. *Res inter alios acta* provides that a party's rights generally cannot be prejudiced by another's act, declaration, or omission.[101] However, in a conspiracy, the act of one is the act of all, rendering all conspirators as co-principals "regardless of the extent and character of their participation[.]"[102] Under Rule 130, Section 30 of the Rules of Court, an exception to the *res inter alios acta* rule is an admission by a conspirator relating to the conspiracy:

> SECTION 30. *Admission by conspirator.* — The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.

As noted in *Dungo*, hazing often involves a conspiracy among those involved, be it in the planning stage, the inducement of the victim, or in the participation in the actual initiation rites.[103] The rule on *res inter alios acta*, then, does not apply.

IV

Petitioner further claims that the Anti-Hazing Law imposes cruel and unusual punishments on those charged under it, as the offense is punishable with *reclusion perpetua*, a non-bailable offense.[104] She also argues that Sections 5 and 14 of the Anti-Hazing Law are a bill of attainder for immediately punishing members of a particular group as principals or co-

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[99] Hank Nuwer, "Cult-Like Hazing," in THE HAZING READER (2004), edited by Hank Nuwer, Indiana University Press, p. 33.

[100] REV. PEN. CODE, art. 17 states:
ARTICLE 17. Principals. — The following are considered principals:
1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

[101] RULES OF COURT, Rule 130, sec. 28 states:
SECTION 28. *Admission by third-party.* — The rights of a party cannot be prejudiced by an act, declaration, or omission of another, except as hereinafter provided.

[102] *People v. Buntag*, 471 Phil. 82, 94 (2004) [Per J. Callejo, Sr., Second Division].

[103] *Dungo v. People*, 762 Phil. 630, 673–674 (2015) [Per J. Mendoza, Second Division].

[104] *Rollo*, p. 15.

conspirators, regardless of actual knowledge or participation in the crime.[105] Both these arguments are without merit.

An effective and appropriate analysis of constitutional provisions requires a holistic approach.[106] It starts with the text itself, which, whenever possible, must be given their ordinary meaning, consistent with the basic principle of *verba legis*.[107] The constitutional provisions must be understood as being parts of a greater whole:

> Reading a constitutional provision requires awareness of its relation with the whole of the Constitution. A constitutional provision is but a constituent of a greater whole. It is the framework of the Constitution that animates each of its components through the dynamism of these components' interrelations. What is called into operation is the entire document, not simply a peripheral item. The Constitution should, therefore, be appreciated and read as a singular, whole unit — *ut magis valeat quam pereat*. Each provision must be understood and effected in a way that gives life to all that the Constitution contains, from its foundational principles to its finest fixings.[108] (Citations omitted)

The history of a constitutional provision may also be a source of guidance in its interpretation. Comparing the present wording of the text with its prior counterparts, both as to form and substance, may illuminate on the meaning of the provision.[109]

Article III, Section 19(1) of the 1987 Constitution provides:

> SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

The prohibition against the infliction of cruel, degrading, or inhuman punishment in the Philippines traces its roots to U.S. President William McKinley's Instructions to the Philippine Commission in 1900. There, the prohibition against "cruel and unusual punishment" was first imposed:

> Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules:

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[105] Id. at 167–169.

[106] *Social Weather Stations, Inc. v. Commission on Elections,* 757 Phil. 483, 521 (2015) [Per J. Leonen, En Banc].

[107] *David v. Senate Electoral Tribunal*, 795 Phil. 529, 570 (2016) [Per J. Leonen, En Banc].

[108] Id.

[109] Id.

> . . . that excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishment inflicted[.]*[110] (Emphasis supplied)

This phrase has appeared in every fundamental law adopted since, with nearly consistent wording. It was upon the enactment of the 1987 Constitution that the wording of the provision was changed from "unusual" to "degrading or inhuman."

This constitutional prohibition had generally been aimed at the "form or character of the punishment rather than its severity in respect of duration or amount,"[111] such as "those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like."[112] It is thus directed against "extreme corporeal or psychological punishment that strips the individual of [their] humanity."[113]

In line with this, this Court has found that the penalty of life imprisonment or *reclusion perpetua* does not violate the prohibition.[114] Even the death penalty in itself was not considered cruel, degrading, or inhuman.[115]

Nonetheless, this Court has found that penalties like fines or imprisonment may be cruel, degrading, or inhuman when they are "flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community."[116] However, if the severe penalty has a legitimate purpose, then the punishment is proportionate and the prohibition is not violated.

In *Spouses Lim v. People*,[117] the penalty of *reclusion perpetua* on a person who committed estafa by means of a bouncing check worth ₱365,750.00 was found consistent with the intent of Presidential Decree No. 818. The penalty did not violate Article III, Section 19(1) of the Constitution, this Court found:

> Petitioners contend that, inasmuch as the amount of the subject check is ₱365,750, they can be penalized with reclusion perpetua or 30 years of imprisonment. This penalty, according to petitioners, is too severe

[110] Instructions of President William McKinley to the Philippine Commission (1900). *See also* Philippine Organic Act (1902), sec. 5; Jones Law (1916), sec. 3; CONST. (1935); CONST. (1973), art. IV, sec. 21;

[111] *People v. De La Cruz*, 92 Phil. 906, 908 (1953) [Per J. Bengzon, En Banc]. *See also Baylosis v. Chavez, Jr.*, 279 Phil. 448 (1991) [J. Narvasa, En Banc] and *People v. Tongko*, 353 Phil. 37 (1998) [J. Puno, Second Division].

[112] Id.

[113] *Maturan v. Commission on Elections*, 808 Phil. 86, 94 (2017) [Per J. Bersamin, En Banc].

[114] *People v. Dapitan*, 274 Phil. 661, 672–673 (1991) [Per J. Davide, Jr., Third Division].

[115] *See Echegaray v. Secretary of Justice*, 358 Phil. 410 (1998) [Per Curiam, En Banc]; *People v. Mercado*, 400 Phil. 37 (2000) [Per Curiam, En Banc].

[116] *Spouses Lim v. People*, 438 Phil. 749, 754 (2002) [Per J. Corona, En Banc].

[117] 438 Phil. 749 (2002) [Per J. Corona, En Banc].

and disproportionate to the crime they committed and infringes on the express mandate of Article III, Section 19 of the Constitution which prohibits the infliction of cruel, degrading and inhuman punishment.

Settled is the rule that a punishment authorized by statute is not cruel, degrading or disproportionate to the nature of the offense unless it is flagrantly and plainly oppressive and wholly disproportionate to the nature of the offense as to shock the moral sense of the community. It takes more than merely being harsh, excessive, out of proportion or severe for a penalty to be obnoxious to the Constitution. Based on this principle, the Court has consistently overruled contentions of the defense that the penalty of fine or imprisonment authorized by the statute involved is cruel and degrading.

In *People vs. Tongko*, this Court held that the prohibition against cruel and unusual punishment is generally aimed at the form or character of the punishment rather than its severity in respect of its duration or amount, and applies to punishments which never existed in America or which public sentiment regards as cruel or obsolete. This refers, for instance, to those inflicted at the whipping post or in the pillory, to burning at the stake, breaking on the wheel, disemboweling and the like. The fact that the penalty is severe provides insufficient basis to declare a law unconstitutional and does not, by that circumstance alone, make it cruel and inhuman.

. . . .

. . .The primary purpose of PD 818 is emphatically and categorically stated in the following:

> *WHEREAS, reports received of late indicate an upsurge of estafa (swindling) cases committed by means of bouncing checks;*
>
> *WHEREAS, if not checked at once, these criminal acts would erode the people's confidence in the use of negotiable instruments as a medium of commercial transaction and consequently result in the retardation of trade and commerce and the undermining of the banking system of the country;*
>
> *WHEREAS, it is vitally necessary to arrest and curb the rise in this kind of estafa cases by increasing the existing penalties provided therefor.*

Clearly, the increase in the penalty, far from being cruel and degrading, was motivated by a laudable purpose, namely, to effectuate the repression of an evil that undermines the country's commercial and economic growth, and to serve as a necessary precaution to deter people from issuing bouncing checks. The fact that PD 818 did not increase the amounts corresponding to the new penalties only proves that the amount is immaterial and inconsequential. What the law sought to avert was the proliferation of *estafa* cases committed by means of bouncing checks. Taking into account the salutary purpose for which said law was decreed, we conclude that PD 818 does not violate Section 19 of Article III of the Constitution.[118] (Citations omitted)

[118] Id. at 754–755.

The intent of the Anti-Hazing Law is to deter members of a fraternity, sorority, organization, or association from making hazing a requirement for admission. By making the conduct of initiation rites that cause physical and psychological harm *malum prohibitum*, the law rejects the defense that one's desire to belong to a group gives that group the license to injure, or even cause the person's death:

> The public outrage over the death of Leonardo "Lenny" Villa — the victim in this case — on 10 February 1991 led to a very strong clamor to put an end to hazing. Due in large part to the brave efforts of his mother, petitioner Gerarda Villa, groups were organized, condemning his senseless and tragic death. This widespread condemnation prompted Congress to enact a special law, which became effective in 1995, that would criminalize hazing. The intent of the law was to discourage members from making hazing a requirement for joining their sorority, fraternity, organization, or association. Moreover, the law was meant to counteract the exculpatory implications of "consent" and "initial innocent act" in the conduct of initiation rites by making the mere act of hazing punishable or *mala prohibita*.[119] (Citations omitted)

Petitioner here fails to show how the penalties imposed under the Anti-Hazing Law would be cruel, degrading, or inhuman punishment, when they are similar to those imposed for the same offenses under the Revised Penal Code, albeit a degree higher.[120] To emphasize, the Anti-Hazing Law aims to prevent organizations from making hazing a requirement for admission.[121] The increased penalties imposed on those who participate in hazing is the country's response to a reprehensible phenomenon that persists in schools and institutions.[122] The Anti-Hazing Law seeks to punish the conspiracy of silence and secrecy, tantamount to impunity, that would otherwise shroud the crimes committed.[123]

In fact, the amendments on the imposable penalties introduced by Republic Act No. 11053 bolster the State's interest in prohibiting hazing. As noted by public respondents, a ₱3-million fine shall be imposed in addition to the penalty of *reclusion perpetua* for those who actually planned or participated in the hazing if it results in death, rape, sodomy, or mutilation. Further, Republic Act No. 11053 put in place imposable penalties on certain members, officers, and alumni of the organization involved in the hazing, and prescribes the administrative sanctions, if applicable.[124] The concealment of

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[119] *Villareal v. People*, 680 Phil. 527, 535 (2012) [Per J. Sereno, Second Division].
[120] *Dungo v. People*, 762 Phil. 630, 666 (2015) [Per J. Mendoza, Second Division].
[121] Id. at 664.
[122] Id. at 684.
[123] *See People v. Feliciano, Jr.*, 792 Phil. 371 (2016) [Per J. Leonen, Special Third Division].
[124] Republic Act No. 11053 (2018), sec. 14(b) states:
(b) The penalty of reclusion perpetua and a fine of Two million pesos (P2,000,000.00) shall be imposed upon:
(1) All persons who actually planned or participated in the conduct of the hazing;
(2) All officers of the fraternity, sorority, or organization who are actually present during the hazing;

the offense or obstruction of the investigation is also penalized.[125]

Notably, Section 14(c) of Republic Act No. 11053 imposes the penalty of *reclusion temporal* in its maximum period and a ₱1-million fine on all persons present in the conduct of the hazing. This new penalty affirms the law's policy to suppress the escalation and encouragement of hazing, and to severely punish bystanders and watchers of the reprehensible acts committed.

In *People v. Feliciano, Jr.*:[126]

> The prosecution of fraternity-related violence, however, is harder than the prosecution of ordinary crimes. Most of the time, the evidence is merely circumstantial. The reason is obvious: loyalty to the fraternity dictates that *brods* do not turn on their *brods*. A crime can go unprosecuted for as long as the brotherhood remains silent.
>
> Perhaps the best person to explain fraternity culture is one of its own.

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(3) The adviser of a fraternity, sorority, or organization who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring or failed to promptly report the same to the law enforcement authorities if such adviser or advisers can do so without peril to their person or their family;

(4) All former officers, nonresident members, or alumni of the fraternity, sorority, or organization who are also present during the hazing: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus belong to any other profession subject to regulation by the Professional Regulation Commission (PRC), such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into the profession shall be subject to the approval of the respective Professional Regulatory Board;

(5) Officers or members of a fraternity, sorority, or organization who knowingly cooperated in carrying out the hazing by inducing the victim to be present thereat; and

(6) Members of the fraternity, sorority, or organization who are present during the hazing when they are intoxicated or under the influence of alcohol or illegal drugs[.]

[125] Republic Act No. 11053 (2018), sec. 14(d) states:

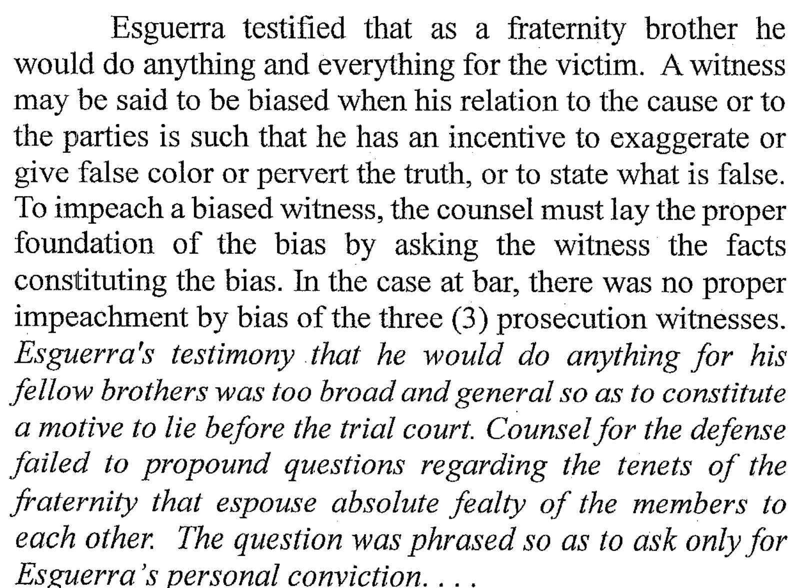
(d) The penalty of reclusion temporal and a fine of One million pesos (P1,000,000.00) shall be imposed upon former officers, nonresident members, or alumni of the fraternity, sorority, or organization who, after the commission of any of the prohibited acts proscribed herein, will perform any act to hide, conceal, or otherwise hamper or obstruct any investigation that will be conducted thereafter: Provided, That should the former officer, nonresident member, or alumnus be a member of the Philippine Bar, such member shall immediately be subjected to disciplinary proceedings by the Supreme Court pursuant to its power to discipline members of the Philippine Bar: Provided, further, That should the former officer, nonresident member, or alumnus belong to any other profession subject to regulation by the PRC, such professional shall immediately be subjected to disciplinary proceedings by the concerned Professional Regulatory Board, the imposable penalty for which shall include, but is not limited to, suspension for a period of not less than three (3) years or revocation of the professional license. A suspended or revoked professional license pursuant to this section may be reinstated upon submission of affidavits from at least three (3) disinterested persons, good moral certifications from different unaffiliated and credible government, religious, and socio-civic organizations, and such other relevant evidence to show that the concerned professional has become morally fit for readmission into the profession: Provided, That said readmission into the profession shall be subject to the approval of the respective Professional Regulatory Board.

[126] 792 Phil. 371 (2016) [Per J. Leonen, Special Third Division].

Raymund Narag was among those charged in this case but was eventually acquitted by the trial court. In 2009, he wrote a blog entry outlining the culture and practices of a fraternity, referring to the fraternity system as "a big black hole that sucks these young promising men to their graves." This, of course, is merely his personal opinion on the matter. However, it is illuminating to see a glimpse of how a fraternity member views his disillusionment of an organization with which he voluntarily associated. In particular, he writes that:

> The fraternities anchor their strength on secrecy. Like the Sicilian code of *omerta,* fraternity members are bound to keep the secrets from the non-members. They have codes and symbols the frat members alone can understand. They know if there are problems in campus by mere signs posted in conspicuous places. They have a different set *[sic]* of communicating, like inverting the spelling of words, so that ordinary conversations cannot be decoded by non-members.
>
> It takes a lot of acculturation in order for frat members to imbibe the code of silence. The members have to be a mainstay of the *tambayan* to know the latest developments about new members and the activities of other frats. Secrets are even denied to some members who are not really in to *[sic]* the system. They have to earn a reputation to be part of the inner sanctum. It is a form of giving premium to become the "true blue member".
>
> The code of silence reinforces the feeling of elitism. The fraternities are worlds of their own. They are sovereign in their existence. They have their own myths, conceptualization of themselves and worldviews. Save perhaps to their alumni association, they do not recognize any authority aside from the head of the fraternity.

The secrecy that surrounds the traditions and practices of a fraternity becomes problematic on an evidentiary level as there are no set standards from which a fraternity-related crime could be measured. In *People v. Gilbert Peralta,* this Court could not consider a fraternity member's testimony biased without any prior testimony on fraternity behavior:



> Esguerra testified that as a fraternity brother he would do anything and everything for the victim. A witness may be said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color or pervert the truth, or to state what is false. To impeach a biased witness, the counsel must lay the proper foundation of the bias by asking the witness the facts constituting the bias. In the case at bar, there was no proper impeachment by bias of the three (3) prosecution witnesses. *Esguerra's testimony that he would do anything for his fellow brothers was too broad and general so as to constitute a motive to lie before the trial court. Counsel for the defense failed to propound questions regarding the tenets of the fraternity that espouse absolute fealty of the members to each other. The question was phrased so as to ask only for Esguerra's personal conviction. . . .*

> The inherent difficulty in the prosecution of fraternity-related violence forces the judiciary to be more exacting in examining all the evidence on hand, with due regard to the peculiarities of the circumstances.[127] (Citations omitted)

Moreover, contrary to petitioner's assertion, the Anti-Hazing Law is not a bill of attainder.

Bills of attainder are prohibited under Article III, Section 22 of the Constitution, which states:

> SECTION 22. No *ex post facto* law or bill of attainder shall be enacted.

A bill of attainder is rooted in the historical practice of the English Parliament to declare certain persons—such as traitors—attainted, or stained, and that the corruption of their blood extended to their heirs, who would not be allowed to inherit from the "source" of the corruption. These attainted persons and their kin were usually so declared without the benefit of judicial process.[128]

In modern times, a bill of attainder is generally understood as a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial.[129] The earliest form of prohibition against the enactment of bills of attainder was introduced in the Malolos Constitution:[130]

> ARTICLE 14. No Filipino can be prosecuted or sentenced except by the judge or court that, by virtue of the laws previous to the crime, has been given jurisdiction, and in the manner that these laws prescribe.

A bill of attainder encroaches on the courts' power to determine the guilt or innocence of the accused and to impose the corresponding penalty, violating the doctrine of separation of powers.[131]

For a law to be considered a bill of attainder, it must be shown to contain all of the following: "a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack

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127 Id. at 400–402.
128 J. Feliciano, Concurring Opinion in *Tuason v. Register of Deeds, Caloocan City*, 241 Phil. 650, 665–666 (1988) [Per J. Narvasa, En Banc] citing *Ex Parte Garland*, 4 Wall. 333, 18 L. Ed. 366 (1867).
129 Id.
130 J. Sarmiento, Dissenting Opinion in *Baylosis v. Chavez, Jr.*, 279 Phil. 448, 475 (1991) [Per J. Narvasa, En Banc].
131 Id.

of judicial trial."[132] The most essential of these elements is the complete exclusion of the courts from the determination of guilt and imposable penalty.[133]

In *People v. Ferrer,*[134] this Court delved into the question of whether the Anti-Subversion Act, which declared illegal the Communist Party of the Philippines and any other organizations that constitute an "organized conspiracy to overthrow the Government of the Republic of the Philippines for the purpose of establishing in the Philippines a totalitarian regime and place the Government under the control and domination of an alien power[,]"[135] was a bill of attainder.

This Court found that the law was, in fact, not. It noted that the Anti-Subversion Act would be a bill of attainder only if it had made it unnecessary for members of the Communist Party to have to be charged in court.[136] Moreover, even if the Anti-Subversion Act specifically named the Communist Party, it would be insufficient to declare the law a bill of attainder:

> Even assuming, however, that the Act specifies individuals and not activities, this feature is not enough to render it a bill of attainder. A statute prohibiting partners or employees of securities underwriting firms from serving as officers or employees of national banks on the basis of a legislative finding that the persons mentioned would be subject to the temptation to commit acts deemed inimical to the national economy, has been declared not to be a bill of attainder. Similarly, a statute requiring every secret, oath-bound society having a membership of at least twenty to register, and punishing any person who becomes a member of such society which fails to register or remains a member thereof, was declared valid even if in its operation it was shown to apply only to the members of the Ku Klux Klan.
>
> In the Philippines the validity of section 23 (b) of the Industrial Peace Act, requiring labor unions to file with the Department of Labor affidavits of union officers "to the effect that they are not members of the Communist Party and that they are not members of any organization which teaches the overthrow of the Government by force or by any illegal or unconstitutional method," was upheld by this Court.
>
> Indeed, it is only when a statute applies either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial does it become a bill of attainder. It is upon this ground that statutes which disqualified those who had taken part in the rebellion against the Government of the United States during the Civil War from holding office, or from exercising their profession, or which prohibited the payment of further compensation to individuals named in the Act on the basis of a finding that they had engaged

[132] *Misolas v. Panga*, 260 Phil. 702, 713 (1990) [Per J. Cortes, En Banc].
[133] Id.
[134] 150-C Phil. 551 (1972) [Per J. Castro, En Banc].
[135] Id. at 563, *see* footnote 1. *See also* Republic Act No. 1700 (1957), sec. 2.
[136] *See People v. Ferrer*, 150-C Phil. 551 (1972) [Per J. Castro, En Banc].

> in subversive activities, or which made it a crime for a member of the Communist Party to serve as an officer or employee of a labor union, have been invalidated as bills of attainder.
>
> But when the judgment expressed in legislation is so universally acknowledged to be certain as to be "judicially noticeable," the legislature may apply its own rules, and judicial hearing is not needed fairly to make such determination.[137] (Citations omitted)

Similarly, in *Bataan Shipyard & Engineering Company, Inc. v. Presidential Commission on Good Government*,[138] Executive Orders No. 1 and 2, which created the Presidential Commission on Good Government, were also found not to be bills of attainder. This Court declared that the finding of guilt must still be made by a court, namely, the Sandiganbayan:

> In the first place, nothing in the executive orders can be reasonably construed as a determination or declaration of guilt. On the contrary, the executive orders, inclusive of Executive Order No. 14, make it perfectly clear that any judgment of guilt in the amassing or acquisition of "ill-gotten wealth" is to be handed down by a judicial tribunal, in this case, the Sandiganbayan, upon complaint filed and prosecuted by the PCGG. In the second place, no punishment is inflicted by the executive orders, as the merest glance at their provisions will immediately make apparent. In no sense, therefore, may the executive orders be regarded as a bill of attainder.[139]

Here, the mere filing of an Information against petitioner and her fellow sorority members is not a finding of their guilt of the crime charged. Contrary to her claim, petitioner is not being charged merely because she is a member of the Tau Gamma Sigma Sorority, but because she is allegedly a principal by direct participation in the hazing that led to Abracia's death. As stated, these are matters for the trial court to decide. The prosecution must still prove the offense, and the accused's participation in it, beyond reasonable doubt. Petitioner, in turn, may present her defenses to the allegations.

Parenthetically, the amendments in Republic Act No. 11053 may be applied retroactively in cases like petitioner's where the hazing resulted in death, contrary to the position taken by public respondents. Previously, should an accused fail to overturn the *prima facie* presumption, they would be charged as principals, with a corresponding penalty of *reclusion perpetua* when the hazing resulted in death. Now, Section 14(c) imposes the lower penalty for one's presence during the hazing—*reclusion temporal* in its maximum period with a ₱1-million fine. As the penalty is not *reclusion perpetua*, the accused may also benefit from the application of Republic Act

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[137] Id. at 569–570.
[138] 234 Phil. 180 (1987) [Per J. Narvasa, En Banc].
[139] Id. at 230–231.

No. 4103, as amended, otherwise known as the Indeterminate Sentence Law.

Legislative acts are presumed constitutional.[140] To be declared unconstitutional, a statute or any of its provisions must be shown to have clearly and unmistakably breached the Constitution.[141] Petitioner has failed to discharge her burden of overcoming the presumption of the constitutionality of Section 14 of the Anti-Hazing Law.

Those who object to, intervene against, or attempt to stop the despicable or inhumane traditions or rituals of an organization or institution may be branded as *duwag, nakakahiya, walang pakisama, traydor*. Section 14, paragraph 4 of the Anti-Hazing Law turns cowardice into virtue, shame into strength, and disobedience into heroism. More than that, this serves as a grave warning that failing to act—knowing fully well that others are being traumatized, injured, maimed, or killed—does not make a person only an observer or witness. It makes them a perpetrator.

WHEREFORE, the Petition is **DISMISSED** for lack of merit.

Let copies of this Decision be furnished the Director of the National Bureau of Investigation and the Director General of the Philippine National Police. Both are **DIRECTED** to cause the immediate arrest of those accused in Criminal Case No. 2008-895 who are still at large, and to inform this Court of their compliance within ten (10) days from notice. The trial judge is likewise **DIRECTED** to issue such other and further orders to take all the accused into custody and to hasten the proceedings in Criminal Case No. 2008-895. This Decision shall be immediately executory.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

[140] *See Pimentel v. Executive Secretary*, 691 Phil. 143 (2012) [Per J. Perlas-Bernabe, En Banc]; *Smart Communications, Inc. v. Municipality of Malvar, Batangas*, 727 Phil. 430 (2014) [Per J. Carpio, En Banc].

[141] *See Spouses Lim v. People*, 438 Phil. 749 (2002) [Per J. Corona, En Banc].

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

On official leave
ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On official business
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Associate Justice

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MARIO V. LOPEZ
Associate Justice

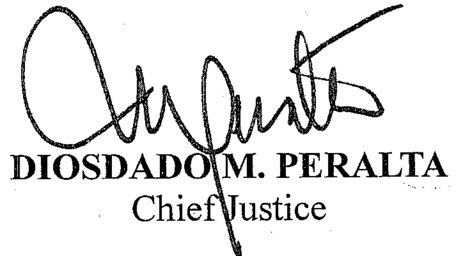
EDGARDO L. DELOS SANTOS
Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.



DIOSDADO M. PERALTA
Chief Justice